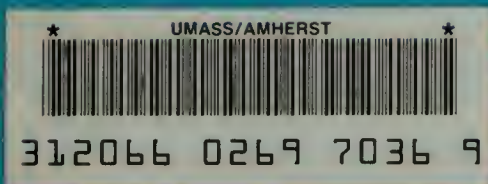


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THE DIVISION OF BANKS

ADMINISTRATIVE BULLETIN MANUAL

Published by the Office of the Secretary of State,

Michael Joseph Connolly, Secretary



The Commonwealth of Massachusetts

*Office of the Commissioner of Banks
Leverett Saltonstall Building, Rm. 2004
100 Cambridge Street
Boston, Massachusetts 02202*

WILLIAM F. WELD

GOVERNOR

ALAN R. MORSE, JR.

COMMISSIONER

February 1993

To The Reader:

In January of 1980, the Division released the first compilation of its directives and policy statements in the form of the Administrative Bulletin Manual. Although the Manual was originally updated every other year through 1984, it has not been released in completed form since that time. Accordingly, in conjunction with Governor Weld's program of Regulatory Reform, the Division committed to reissue the complete Manual.

All Administrative Bulletins have been reviewed, updated or deleted as necessary. Changes in law and regulation at both the state and federal level, as well as changes in Division procedures have resulted in upwards of 20 of the previously released 58 Bulletins being deleted with several others significantly restated. For the same reason, after review, 11 of the Division's 25 numbered opinions have also been deleted. The remaining documents, in general, retain the same reference numbers as originally issued. Several combined Bulletins will be identified by the index to the institutions covered. For the first time, however, the pages of the Manual are numbered consecutively and included in the indices.

With one notable exception, this Manual contains all Bulletins which remain in effect. The exception is for those prior Bulletins issued as 13-2B or 13-2C which remain applicable to loans made at the time those Bulletins were effective.

With the issuance of the Manual the Division will now undertake the project of recodifying the Bulletins into a more meaningful order and with an index which will assist in locating documents by subject matter. The Division welcomes any suggestions from readers on additional ways to improve the Manual to make it a more useful document. Suggestions should be made to the Division's Legal Section at (617) 727-3139.

Please note that the regulations of the Division are codified at 209 Code of Massachusetts Regulations ("CMR"). As with all regulations of state agencies, those regulations are published by Office of the Secretary of State and may be purchased through the State House Bookstore.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Alan R. Morse, Jr.".

Alan R. Morse, Jr.

Commissioner of Banks

ARM/trs

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COMMONWEALTH OF MASSACHUSETTS

DIVISION OF BANKS

ADMINISTRATIVE BULLETIN

Ref. No. 1-3

Mutual Banks and Credit Unions

Issued: July 1, 1979

G.L. c. 167, §§ 2 and 3

Audit Policy

Determination of the audit requirements of your institution is the responsibility of your audit or finance committee. This Division will no longer require committees and auditors to comply with previously issued audit guidelines, but, rather, to gear the scope of future audits to their own institution's needs. The committee should require that the day to day internal operational controls are adequately scrutinized as part of the audit proposal. The critical areas of the proposed audit scope, the firm or company selected, and the cost of the proposal should be reported to the Commissioner of Banks as soon as it is accepted by the committee. This information will be reviewed for acceptance of the scope, compliance with the General Laws, and used by the department in planning of its future examinations.

Your notification to this department will not be answered unless the proposal is unacceptable (for example, inadequate scope). If the committee feels that it needs assistance in determining the scope, it should consult the appropriate trade association, accountants, or industry audit guides such as "Audits of Savings and Loan Associations", and/or "Audit of Banks" published by the A.I.C.P.A., and available to all C.P.A. members.

When the audit of your institution has been completed and the report and management letter submitted to the board, a copy of the completed report and management letter should be sent to the appropriate Senior Deputy. The report will be reviewed by the Division and will influence the proposed scope of your next examination by the Division.

The committee members should be cognizant of the fact that they are responsible for the integrity of the financial records of their institution, and proper accounting and auditing procedures should be supportive of that responsibility. In the event that a Division examination discloses irregularities in the records of the institution, then the Commissioner of Banks may name an accountant, at the institution's expense, and in compliance with the provisions of the General Laws Chapter 167, Section 2.

COMMONWEALTH OF MASSACHUSETTS

DIVISION OF BANKS

ADMINISTRATIVE BULLETIN

Ref. No. 1-4

(Restated 1992)

Mutual Savings Banks

Mutual Co-Operative Banks

G.L. c. 168, § 25

G.L. c. 170, § 14

Directive Relative to Minimum Standards
of Performance for Members of the Auditing
Committee of Mutual Savings Banks and the
Finance Committees of Mutual Co-Operative Banks

Members of the Auditing Committee of a savings bank, or the Finance Committee of a mutual co-operative bank, must, in addition to satisfying the statutory requirements governing the annual audit of their institutions found in c. 168, § 25 and c. 170, § 14 respectively, comply with the following guidelines:

1. Prior to the annual audit required by statute, the auditing or finance committee shall meet to (a) review the institution's most recent audit and examination reports, and (b) based on this review, identify those areas, both new and existing, to which special attention should be given.
2. During the course of such audit, the auditing or finance committee shall make themselves reasonably available for consultation with the accountant conducting the audit.
3. At the conclusion of the audit, the auditing or finance committee shall review the audit report prepared by the accountant. Such meeting shall be held without the officers of the bank being present except at the request of the auditing or finance committee and only for the purpose of responding to specific questions raised by the audit report. It should be emphasized here that the accountants shall report only to the auditing or finance committee, and not to the management of the bank.

4. Having received and reviewed the audit report prepared by the accountant, the auditing or finance committee shall submit such report, along with its own conclusions, to the governing board of the institution.
5. Moreover, as a general matter, minutes of the meetings of the auditing or finance committee shall be taken, as well as attendance records. Such minutes and attendance records of the auditing or finance committee shall be made available to examiners from the Division of Banks.

In closing, it is the position of the Division of Banks that any member of the auditing or finance committee who is either unable or unwilling to meet the requisite time commitment involved in supervising the annual audit should be urged by the governing board of the institution to resign. All trustees or directors seeking membership on these committees should become acquainted with these guidelines prior to their election.

RELATED

MATERIALS G.L. c. 168, § 14

G.L. c. 168, § 25

G.L. c. 170, § 11

G.L. c. 170, § 14

Administrative Bulletin 1-3

COMMONWEALTH OF MASSACHUSETTS

DIVISION OF BANKS

ADMINISTRATIVE BULLETIN

Ref. No. 2-1A

All Credit Unions

G.L. c. 167, § 6

Issued: September 18, 1991

G.L. c. 171, § 69

Statement of Policy on Loan Loss
Reserve Requirements for Credit Unions

**AUTHORITY
AND SCOPE**

This policy statement is issued by the Commissioner of Banks under the authority of G.L. c. 167, § 6. It is the Division of Banks' ("The Division") official statement on minimum regulatory requirements for credit union loan loss reserves. Its primary purpose is to require credit unions to establish and maintain adequate loan loss reserves.

POLICY

Statutory loan loss reserve requirements for credit unions are found in G.L. c. 171, § 69. This provision requires a reserve equal to the credit union's last three examinations. This statute, however, is not a ceiling on the level of reserves maintained by credit unions. It is the Division's position that G.L. c. 171, § 69 only establishes a threshold or minimum reserve requirement for credit unions. The management of a credit union is responsible for establishing and maintaining an Allowance for Loan Losses ("ALL") that is adequate to absorb estimated losses inherent in the loan portfolio. Historically based loan loss reserves are often an inadequate basis for calculating such reserves during volatile economic periods. Accordingly, credit unions must observe the following standards in establishing an adequate allowance for loan loss reserves.

The current authoritative source of accounting guidance on the ALL under General Accepted Accounting Principles ("GAAP") is the Financial Accounting Standards Board's Statement No. 5, Accounting for Contingencies (FASB 5). FASB 5 states that an allowance for credit losses should be established when information prior to the issuance of the financial statements indicates that it is probable that a loss can be reasonably estimated. Accordingly, credit unions are required to adhere to FASB 5 in the establishment of such reserve.

Credit unions should consider the following factors when determining the adequacy of the allowance for loan losses:

- A. The volume and mix of the existing loan portfolio, including the volume and severity of non-performing loans and adversely classified credits, as well as an analysis of net charge-offs experienced on previously classified loans;
- B. The extent to which loan renewals and extensions are used to maintain loans on a current basis and the degree of risk associated with such loans;
- C. The trend in loan growth, including any rapid increase in loan volume within a relatively short time period;
- D. General and local economic conditions affecting the collectibility of the credit union's loans;
- E. Previous loan loss experience by loan type, including net charge-offs as a percent of average loans over the past several years;
- F. The relationship and trend over the past several years of recoveries as a percent of previous year's charge-offs; and
- G. Available outside information of a comparable nature regarding the loan portfolios of other credit unions, including peer group credit unions.

At a minimum, the allowance should be sufficient to cover at least those loans classified loss in the examination report, some applicable percentage of other classified loans, and an estimate of potential losses on all other loans in the portfolio.

ENFORCEMENT The adequacy of loan loss reserves will be carefully reviewed by examiners during the annual examination process under G.L. c. 167, §2. Examiners will determine whether credit union management reviews the adequacy of the ALL on at least a semi-annual basis. Credit union management must maintain records of its allowance evaluations. Credit unions found to have inadequate loan loss reserves will be required to make adjustments or additional provisions to such reserves by making a charge to provision for loan loss reserve.

COMMONWEALTH OF MASSACHUSETTS

DIVISION OF BANKS

ADMINISTRATIVE BULLETIN

Ref. No. 2-4

All Banks and Credit Unions

(Restated 1992)

G.L. c. 167, § 6

Directive Relative to the Charge-Off
of Loans by State-Chartered Institutions

Chapter 167, section 6, grants the Commissioner of Banks the general authority to "prescribe the manner and form of keeping the books and accounts" of state-chartered banks and credit unions. Pursuant to this statute, the Commissioner of Banks hereby establishes the following guideline relative to the charging-off of losses:

1. All loans or portions thereof, as well as real estate in possession or by foreclosure, which are classified as losses by examiners from the Division of Banks, are to be charged-off or otherwise reserved for within thirty (30) days of receipt of the examination report in which they appear. Once this action has been taken by the bank or credit union, written notice shall be sent to the Commissioner.
2. Recognizing that there may be extenuating circumstances or subsequent events that may mitigate against classifying the loans as losses, or that there may be a legitimate difference of opinion between bank management and the Division's examiner, the Commissioner may, upon written request, waive the provisions of this Administrative Bulletin. Once the request for waiver has been received, the Commissioner will call a meeting between the bank's management and the Senior Deputy Commissioner and Chief Director of the appropriate examination section to discuss the loans in question. The Commissioner's decision on waiver will be based on the conclusions drawn from this meeting.

COMMONWEALTH OF MASSACHUSETTS

DIVISION OF BANKS

ADMINISTRATIVE BULLETIN

Ref. No. 3-2

All Banks

Issued: July 1, 1979

G.L. c. 167F, § 3

(Restated 1992)

Covered Call Options

This Division has no objection to the writing of call options against securities held under c. 167F, § 3 and former §§ 47 through 50 of c. 168 of the Massachusetts General Laws, subject to the following guidelines.

1. Approved option activity is specifically limited to writing of covered call options against securities owned by the bank. Under no circumstances may an option be purchased except in a closing purchase transaction.
2. Only options listed on a registered national securities exchange and cleared by the Options Clearing Corporation may be written.
3. In the event that securities underlying any covered option are sold, the option must be contemporaneously repurchased.
4. No bank shall undertake a program of writing covered options unless it has given notice to the Office of the Commissioner of Banks that the activity has been specifically authorized by vote of its Board of Trustees.
5. A Board of Investment shall (a) approve every option transaction; (b) review its bank's position with respect to optioned securities on at least a monthly basis; and (c) maintain records as to each option transaction in order to demonstrate its exercise of prudent judgment under a rationale related to conservative management.

6. Optioned securities held by a custodian must be held under an escrow or depository agreement and segregated from other securities owned by the bank and the bank must obtain and retain in its possession a copy of an escrow receipt identifying with particularity the escrowed stock.
7. The price (premium) received for selling a call option shall not be included in income at the time of receipt but shall be carried in a deferred account until one of the following occurs: (a) the call option expires through the passage of time; (b) the bank engages in a closing purchase transaction (repurchase transaction) with respect to the call option; or (c) the bank sells the underlying stock pursuant to an exercise of the call option.
8. Any income resulting from the expiration of written call options and net income or expense resulting from a repurchase transaction should be included in a separate operating investment income account such as "Income from Options" and will qualify as net earnings available for dividends. If an option is exercised, the premium received should be treated as part of the proceeds from the sale of the underlying stock.
9. For the purpose of footnote disclosure of the market value of equity securities (per January 26, 1976 directive), the current market price of any outstanding call options must be netted against the premium carried in the deferred account; if the option is not traded that day, the offering price of the option must be used.

Exception to the first sentence of guideline (8):

If the underlying stock is sold for sound investment or other reasons unrelated to option income, the gain or loss on the repurchase transaction may be combined with net gain or loss on the stock to produce a gain (loss) to be credited (charged) to surplus.

COMMONWEALTH OF MASSACHUSETTS

DIVISION OF BANKS

ADMINISTRATIVE BULLETIN

Ref. No. 5-3

All Banks and Credit Unions

(Restated 1992)

G.L. c. 167, § 2

Availability of Examination Reports
for Individual Study by Directors and Trustees
of State-Chartered Financial Institutions

G.L. c. 167, § 2 provides that copies of examination reports shall be made available only to the financial institution in question and to those persons, organizations or agencies who have received the prior written approval of the Commissioner of Banks. Pursuant to this authority, the Commissioner of Banks hereby directs that copies of examination reports may be made available for individual study by the directors or trustees of the financial institutions in question, are subject to the following conditions and restrictions:

- (1) To retain confidentiality, the copies must be numbered and allocated only to directors and trustees; and
- (2) after review, the copies must be returned and destroyed.

In closing, directors and trustees should be made aware that the improper use of these reports will be considered a breach of fiduciary duty.

COMMONWEALTH OF MASSACHUSETTS

DIVISION OF BANKS

ADMINISTRATIVE BULLETIN

Ref. No. 5-6

(Restated 1992)

All Banks

All Employees

18 USC, §§ 212 and 213

Loans to Examiners

U.S. Code, Title 18, Section 212 prohibits a bank officer, director or employee from making a loan to and Section 213 prohibits an examiner accepting a loan from a bank that the examiner examines or has the authority to examine.

Examiners who have a loan with a state-chartered bank or credit union are disqualified from examining that bank or credit union.

The Federal Deposit Insurance Corporation has taken the view that a loan by a bank insured by the Corporation to an examiner, either federal or state appointed who may by law examine the bank, constitutes a potential violation of law, which it is required by law to report to the United States Attorney.

The Corporation points out that interpretation as to the effect of the Division's rule on disqualification on a federal criminal statute is in province of the United States Attorney.

This matter is called to your attention due to the potential harsh penalties imposed by the federal law on both an employee subject to the statute and state-chartered banks.

COMMONWEALTH OF MASSACHUSETTS

DIVISION OF BANKS

ADMINISTRATIVE BULLETIN

Ref. No. 5-8A

All Banks and Credit Unions

(Restated 1992)

G.L. c. 167, § 2

Electronic Data Processing Services

In order to facilitate the examination of an institution's electronic data processing systems the Division has prepared various preliminary materials. The information requested on these documents must be prepared, kept current and retained by the appropriate personnel of the institution. Copies of these materials may be obtained from the EDP section of this Division which can be reached at (617) 727-1333.

To further expedite this examination process, this Division must be informed in advance of any proposed change to an institution's data processing system. Accordingly, thirty days prior to any change in servicers or computer systems an institution must submit, in writing, information relative to the action including the names of the proposed hardware and software vendors or servicers, applications processed or serviced, and the projected date of conversion. A copy of any service bureau contract, if applicable, must be submitted.

COMMONWEALTH OF MASSACHUSETTS

DIVISION OF BANKS

ADMINISTRATIVE BULLETIN

Ref. No. 5-9

All Banks and Credit Unions

(Restated 1992)

G.L. c. 167, § 2

Equal Credit Opportunity Examination

The Commissioner of Banks is required by Massachusetts G.L. c. 167, § 2 to examine financial institutions subject to his supervision for compliance with applicable state and federal laws. Pursuant to this authority, the Division of Banks has since August of 1977 conducted a special Equal Credit Opportunity Examination to review compliance with Federal Reserve Board Regulation B, Equal Credit Opportunity, 12 CFR 202 and the regulations promulgated by the Massachusetts Commission Against Discrimination at 804 CMR 7.00, Discrimination in Credit. For examination purposes, the Division will review the documents required to be retained by 12 CFR 202.12 and 804 CMR 7.12 for compliance with both these state and federal consumer credit regulations.

COMMONWEALTH OF MASSACHUSETTS

DIVISION OF BANKS

ADMINISTRATIVE BULLETIN

Ref. No. 6-2

Savings Banks, Co-Operative
Banks and Credit Unions
G.L. c. 167, § 6

Issued: December 10, 1979

Forward Placement or Delayed Delivery Contracts

AUTHORITY Pursuant to the authority of c. 167, § 6 of the M.G.L., the following guidelines are issued to be effective January 1, 1980.

The policies and procedures will apply to outstanding contracts as well as those entered into after January 1, 1980. Policy statements with similar content are being adopted by federal regulatory agencies.

DEFINITIONS Forward Contracts: These are over-the-counter contracts for forward placement or delayed delivery of securities in which one party agrees to purchase and another to sell a specified security at a specified price for future delivery. Contracts specifying settlement in excess of 30 days following trade date shall be deemed to be forward contracts. Forward contracts are not traded on organized exchanges, generally have no required margin payments, and can only be terminated by agreement of both parties to the transaction.

Standby Contracts: These are optional delivery forward contracts on U.S. government and agency securities arranged between securities dealers and customers and do not currently involve trading on organized exchanges. The buyer of a standby contract (put option) acquires, upon paying a fee, the right to sell securities to the other party at a stated price at a future time. The seller of a standby (the issuer) receives the fee, and must stand ready to buy the securities at the other party's option.

GUIDELINES Banks that engage in forward and standby contract activities should only do so in accordance with safe and sound banking practices with levels of activity reasonably related to the bank's business needs and capacity to fulfill its obligations under these contracts. The following are minimal guidelines to be followed by banks authorized to participate in these markets.

1. The board of directors or trustees should consider any plan to engage in these activities and should endorse specific written policies in authorizing these activities. Policy objectives must be specific enough to outline permissible contract strategies and their relationship to other banking activities, and record keeping systems must be sufficiently detailed to permit internal auditors and examiners to determine whether operating personnel have acted in accordance with authorized objectives. Bank personnel are expected to be able to describe and document in detail how the positions they have taken in forward and standby contracts contribute to the attainment of the bank's stated objectives.
2. The board of directors or trustees should establish limitations applicable to forward and standby contract positions and review periodically (at least monthly) contract positions to ascertain conformance with such limits.
3. The bank should maintain general ledger memorandum accounts or commitment registers to adequately identify and control all commitments to make or take delivery of securities. Such registers and supporting journals should at a minimum include:
 - (a) the type and amount of each contract,
 - (b) the maturity date of each contract,
 - (c) the amount of money held in margin accounts.
4. All open positions should be reviewed and market values determined at least monthly (or more often, depending on volume and magnitude of positions), regardless of whether the bank is required to deposit margin in connection with a given contract.
5. Completed forward or standby contracts giving rise to acquisition of securities will require such security transactions to be recorded on the basis of the lower of contract price or market price on settlement date. If the market value of the securities is lower than the contract price, the difference should be recorded as an immediate charge against income.
6. Fee income received by a bank in connection with a standby contract should be deferred at initiation of the contract and accounted for as follows:
 - (a) upon expiration of an unexercised contract the deferred amount should be reported as income;
 - (b) upon a negotiated settlement of the contract prior to maturity, the deferred amount should be accounted for as an adjustment to the expense of such settlement, and the net amount should be transferred to the income account; or

- (c) upon exercise of the contract, the deferred amount should be accounted for as an adjustment to the basis of the acquired securities. Such adjusted cost basis should be compared to market value of securities acquired. See item 5.
- 7. Bank financial reports should disclose in an explanatory note any forward and standby contract activity that materially affects the bank's financial condition.
- 8. To insure that banks minimize credit risk associated with forward and standby contract activity, banks should implement a system for monitoring credit risk exposure associated with various customers and dealers with whom operating personnel are authorized to transact business.
- 9. Banks should establish other internal controls including periodic reports to management and internal audit programs to assure adherence to bank policy, and to prevent unauthorized trading and other abuses.

The issuance of long-term standby contracts, i.e., those for 150 days or more, which give the other party to the contract the option to deliver securities to the bank will ordinarily be viewed as an inappropriate practice. In almost all instances where standby contracts specified settlement in excess of 150 days, supervisory authorities have found that such contracts were related not to the investment or business needs of the institution, but primarily to the earning of fee income or to speculating on future interest rate movements. Accordingly, banks should not issue standby contracts specifying delivery in excess of 150 days, unless special circumstances warrant.

This office intends to monitor closely bank transactions in forward or standby contracts to ensure that any such activity is conducted in accordance with safe and sound banking practices.

COMMONWEALTH OF MASSACHUSETTS

DIVISION OF BANKS

ADMINISTRATIVE BULLETIN

Ref. No. 7-1

(Restated 1992)

All Employees
All Banks and Credit Unions
All Licensees
G.L. c. 268A

Conflict of Interest - Gifts

The purpose of the Conflict of Interest Law, chapter 268A of the General Laws, as described in material by the State Ethics Commission is "to ensure that public employees' private financial interests and personal relationships do not conflict with their public obligations. The law is broadly written to prevent a public employee from becoming involved in a situation which could result in a conflict or give the appearance of a conflict."

Section 3 of that law governs gifts and is applicable to all Division employees, state-chartered banks, credit unions, licensees and others involved with the Division. The following is a summary of that section from materials of the State Ethics Commission. As a state employee, "[I]t is illegal to request or accept anything of "substantial value" from anyone with whom you have or are likely to have official dealings (absent some family or social relationship which would explain the gift) even if the motivation for the gift is to express gratitude for a job well done or to foster goodwill.

It is also illegal for a private party to offer or give anything of substantial value to a public official or employee if it is given "for or because of" some act the official has performed or will perform; this is true even if there is no corrupt intent on the part of either the giver or the receiver.

In 1976 the Massachusetts Appeals Court decided that \$50 is "substantial value." In 1985 the Commission issued a similar ruling. Items of "substantial value" range from cash, additional compensation and tips to free tickets and passes to entertainment events. In addition, free or discounted services such as construction or accounting work are considered gifts."

COMMONWEALTH OF MASSACHUSETTS

DIVISION OF BANKS

ADMINISTRATIVE BULLETIN

Ref. No. 9-1

All Banks and Credit Unions

(Restated 1992)

G.L. c. 167, § 6

Insider Transactions

AUTHORITY Each bank should maintain a record on insider transactions requiring review and approval in manner and form that will enable examiner personnel to identify such insider transactions. Information pertaining to the transactions should be readily accessible to examiners and shall include all documents and other material relied upon by the board in approving each transaction, including the name of the insider, the insider's position or relationship that causes such person to be considered an insider, the date the transaction was approved, and the relevant terms and any other pertinent information which explains the basis for the board's decision. In addition, statements made by directors or trustees who voted not to approve the transaction setting forth their reasons for such a vote should also be maintained.

**DISCLOSURE AND
APPROVAL RE-
QUIREMENTS
INSIDER TRANSACTIONS**

An insider transaction must be disclosed and approved if, either, alone or when aggregated with the outstanding balances, involving assets or services which have a fair market value amounting to more than:

- (a) \$20,000 - if the institution has less than \$100,000,000 in total assets
- (b) \$50,000 - if the institution has more than \$100,000,000 - but less than \$500,000,000 in total assets
- (c) \$100,000 - if the institution has more than \$500,000,000 in total assets

The transaction must be specifically approved by the board of directors or trustees if it equals or exceeds the provisions of a, b, or c above. When an insider transaction becomes reportable because of aggregating past and present considerations and the total now equals or exceeds the provisions of a, b, or c above, the new total should be disclosed and approved as an insider transaction. Amounts paid by the institution to public utility companies which may involve insider considerations need not be reported or approved.

Compliance with the provisions of the above shall not relieve the institution from its duty to conduct its operations in a safe and sound manner nor prevent this Division from taking whatever action it deems necessary to deal with specific acts or practices which, although they do not violate the above provisions are considered detrimental to the safety and sound operation of the institution.

DEFINITIONS "Assets" includes loans or other extensions of credit, (exclusive of credit card transactions) the purchase or sale of the institution or its affiliates' assets, leases of property, real or personal, or payments made for membership dues, fees or charges other than for educational purposes.

"Services" includes the purchase or sale of the institution or its affiliates' services, use of the institution's facilities, its real or personal property or its personnel. Payments for services rendered by an affiliated person in connection with a loan transaction to which the institution or its affiliate is a party, commissions and fees, including brokerage, management, consultant, architectural or legal, including those paid based on referral.

- INSIDERS**
- (1) Directors, trustees, officers or controlling persons of an institution.
 - (2) The parent or stepparent, the spouse, the child or stepchild or any other relative who lives in an insider's house.
 - (3) A director, trustee, officer or controlling person of any majority owned subsidiary of the institution or of any parent company affiliation.
 - (4) Any corporation or organization (excluding non-profit) of which a director, trustee, officer, or controlling person is a director, officer or partner or is directly or indirectly, alone or with a member of his immediate family (as defined in (2) above) the owners of 10 percent or more of any class of debt and/or equity of the corporation or organization, or the owner with other such persons (as defined in (1) above) or their immediate families (as defined in (2) above) 25 percent or more of the debt and/or equity of the corporation or organization.
 - (5) Any trust or other fiduciary in which such persons (as defined in (1) above or a member of the immediate family (as defined in (2) above) has a substantial beneficial interest or serves in a fiduciary capacity.

DEFINITIONS "Director" and "trustee" does not include honorary or advisory directors or a director or trustee emeritus.

"Officer" includes only those who participate in major policy making functions of an institution. The term includes the president, secretary or clerk, treasurer, comptroller, and any vice presidents. It does not include assistant or second vice presidents or other positions having similar authorities.

"Controlling person" is defined generally as a person or entity which effectively controls either alone or with other persons or entities 10 percent or more of an institution.

COMMONWEALTH OF MASSACHUSETTS

DIVISION OF BANKS

ADMINISTRATIVE BULLETIN

Ref. No. 9-1A

Issued: September 18, 1991

All Credit Unions

G.L. c. 167, § 2

G.L. c. 171, §§ 15, 20 and 26

Directive Governing Loans and Fees to
Credit Union Officers and Directors
and their Related Interests

AUTHORITY This directive is issued by the Commissioner of Banks under the authority of G.L. c. 167, § 2 and G.L. c. 171, §§ 20 and 26.

APPLICABILITY

AND SCOPE The terms and conditions of this Administrative Bulletin apply to any extension of credit or fees paid to the directors, and certain officers of a credit union and their related interests. This Directive is intended to further implement the loan and reporting provisions of G.L. c. 171, §§ 20 and 26. It is also designed to prohibit certain transactions with credit union insiders which may promote conflicts of interest that impose a significant threat to the safety and soundness of individual credit unions and their members.

DEFINITIONS The following terms shall have the following meanings unless the context otherwise requires:

"Commissioner" Commissioner of Banks.

"Immediate
"Family Member" A parent, stepparent, spouse, child, stepchild or any other relative living within the same household.

"Official" Any member of the Board of Directors, credit committee or auditing committee.

"Related Interests" Any individual having a common ownership, investment or other pecuniary interest in a business enterprise with an official or a senior management employee or with an immediate family member of an official or a senior management employee. The term shall also include immediate family members.

"Senior Management Employees" The President, Treasurer, Vice Presidents and such other officers established under G.L. c. 171, § 15. For the purpose of this Directive the term senior management employees shall also include members of their immediate families.

A. Prohibited Fees

A credit union shall not make any loan or extend any line of credit if, either directly or indirectly, any commission, fee or other compensation is to be received by the credit union's officials, senior management employees, loan officers, or any immediate family members of such individuals, in connection with underwriting, insuring, servicing, or collecting the loan or line of credit. However, salary for employees is not prohibited by this Section.

B. Extensions of Credit to Officials and Senior Management Employees

This section establishes procedures and other requirements for implementing the provisions of G.L. c. 171, §§ 20 and 26.

1. Initial approval. All applications for loans or lines of credit on which an official or a senior management employee will be either a direct obligor or an endorser, cosigner or guarantor shall be initially acted upon by either the board of directors, the credit committee or loan officer, as specified in the credit union's by-laws.
2. Board of Directors' review. The board of directors shall, in any case, review and approve or deny any application on which an official or a senior management employee is a direct obligor, or endorser, cosigner or guarantor. Approval of a loan to a director shall require a two-thirds vote of the other directors in accordance with G.L. c. 171, § 20.
3. Non-preferential treatment. The rates, terms and conditions on any loan or line of credit either made to, or endorsed or guaranteed by: (i) an official or a senior management employee; (ii) an immediate family member of an official or a senior management employee; or (iii) any related interests of such official or senior management employee, shall not be more favorable than the rates, terms and conditions for comparable loans or lines of credit to all other credit union members.

EFFECTIVE
DATE

This Directive shall govern all credit extensions for which an application is received on or after November 1, 1991.

COMMONWEALTH OF MASSACHUSETTS

DIVISION OF BANKS

ADMINISTRATIVE BULLETIN

Ref. No. 9-3

All Banks and Credit Unions

(Restated 1992)

G.L. c. 167C, § 3

Directive on Exclusive Leases
and Other Restrictive Agreements

The use by state-chartered banks and credit unions of exclusive lease agreements and other restrictive covenants affecting the location of competing bank offices is a matter of serious concern to the Division of Banks. It is the position of the Division that such arrangements frustrate competition and are antithetical to the public interest objective of promoting new branches to serve the convenience and advantage of bank customers and that the use of such arrangements may expose a bank to antitrust liability under federal law (restraint of trade, monopolization, or unfair methods of competition) and therefore constitute an unsafe or unsound practice. Prohibited restrictive arrangements include, but are not limited to, the following examples:

- (I) An agreement by a landlord or lessor not to lease, consent to sublease or sell land or facilities to a competitor of a bank tenant or lessee, or, the conditioning of any such competitive use on the prior consent of the bank tenant or lessee.
- (II) The refusal of a bank as owner or lessor of any property, either directly or indirectly through affiliated companies, individuals, or trusts, to sell or lease such property on reasonable terms to another bank or financial institution of any kind.
- (III) The inclusion of a restrictive covenant in the deed of any property sold by a bank prohibiting the buyer from selling or leasing the property to any bank or other financial institution.

The above examples are presented solely to illustrate the scope of the Division's concern about restrictive arrangements rather than as an exhaustive list of the types of such arrangements or understandings.

All banks and credit unions must cease and desist from entering into any such restrictive arrangement and must make every possible effort to eliminate at the earliest time any restrictive clauses or covenants in agreements to which they are currently a party.

COMMONWEALTH OF MASSACHUSETTS

DIVISION OF BANKS

ADMINISTRATIVE BULLETIN

Ref. No. 9-5

(Restated 1992)

All Banks
G.L. c. 167F, § 2
Paragraph 8

Directive Relative to
Investment in Interest Rate Futures
by State-Chartered Banks

Although there is no specific statutory language granting state-chartered banks the authority to invest in interest rate futures, it is the opinion of the Commissioner of Banks that such an investment would be permissible as a leeway investment under the authority of Massachusetts G.L. c. 167F, § 2, paragraph 8, subject to the limitations contained therein. Such investments shall be made in accordance with sound banking practices and the following guidelines established by the Commissioner:

1. The Board of Directors or Trustees or committees designated by them must authorize all interest rate futures transactions prior to the consummation of any contract. This authorization should include the endorsement of specific policies which outline objectives and strategies to be followed. Such specific policies should discuss in detail (a) the bank's strategy for reducing its net interest rate risk; (b) the names of persons authorized to enter into such contracts on behalf of the bank and their assigned limits; and (c) a statement relative to the segregation of duties, internal controls, and management reports to the governing Board or supervising committee. The Board or committee shall review at each scheduled meeting all outstanding contract positions including gains and losses.
2. Once a contract is consummated, the margin deposit (cash or securities) should be accounted for margin receivable account as a leeway investment. All subsequent margin requirements (variance margin) in cash, either disbursed or received, should be booked in the same manner and to the same account. Subsidiary ledgers should be maintained to reflect the position on each individual contract. The leeway investment limitations are to be measured to the margin receivables outstanding at anytime.
3. Long positions (a purchase contract) should be entered into only in connection with firm commitments to sell mortgages not yet originated. Short positions (a sale contract) used to protect against interest rate risk exposure is permitted subject to the limitations specified in paragraph 8.

COMMONWEALTH OF MASSACHUSETTS

DIVISION OF BANKS

ADMINISTRATIVE BULLETIN

Ref. No. 13-2C (Revised 1988)

All Banks , Credit Unions
and Mortgagees

Reissued: March 15, 1986

G.L. c. 167E, §§ 2 and 3A

Effective: April 7, 1986

G.L. c. 183, § 60

Amendments Issued: September 6, 1988

Amendments Effective: October 1, 1988

Memorandum On Adjustable Rate Mortgage Loans

**AUTHORITY
AND SCOPE**

Paragraph 10 of Subsection B of Section 2 of Chapter 167E of the Massachusetts General Laws authorizes the Commissioner of Banks to impose conditions and restrictions on certain variable rate mortgage loans offered by state-chartered depository institutions. Section 60 of Chapter 183 authorizes the Commissioner to impose conditions and restrictions on certain mortgage notes which will not amortize attendant loans by maturity. Chapter 224 of the Acts of 1985 overrides the Federal preemptions in the Garn-St. Germain Depository Institutions Act of 1983 relative to alternative mortgages. Pursuant to these authorities, the Commissioner herein establishes standards governing adjustable rate mortgage loans. These standards to supersede related standards previously established on adjustable rate mortgage loans.

APPLICABILITY

The conditions and restrictions outlined in this Administrative Bulletin apply to adjustable rate mortgage (also referred to herein as ARM) loans secured by first liens on one-to-four family properties occupied or to be occupied in whole or in part by the borrowers. Owner-occupancy, and therefore applicability, is determined when the loan application is reviewed as a non-commercial loan. Such loans include those made or acquired by state-chartered depository institutions pursuant to Paragraph 10 of Section 2 of Subsection B of Chapter 167E and those loans subject to Section 60 of Chapter 183 of the Massachusetts General Laws.

Any sale of mortgage loans or the servicing of that mortgage loan must be subject to the continued applicability of these guidelines. "Non-Securitized" loan participants are also subject to the guidelines even where the whole loans are held by a non-regulated originator. These guidelines do not apply to certain types of variable rate loans at the present time. The types of loans are: open-end lines of credit; "bridge" loans; construction loans; and any other type of temporary financing, excluding balloon mortgages, intended by the parties to be of short duration.

Commercial loans partially secured by a first lien on an owner-occupied property and intended for non-consumer business purposes are also excluded. Loans that are fully secured by a first lien on applicable property occupied by the mortgagor are subject to the guidelines unless the criteria considered in granting the loan was that reviewed for a non-consumer loan. It is the lender's responsibility to fully document the criteria considered for these loans. This data must be made available for bank examiner's review.

This Administrative Bulletin is effective April 7, 1986 and applies to adjustable rate mortgage loans for which applications are received on or after that date. The 1988 amendments to this bulletin are effective October 1, 1988 and apply to adjustable rate mortgage loans for which applications are received on or after that date.

DESCRIPTION An adjustable rate mortgage loan has features - usually the payment, the term, or the principal balance - which can change to reflect a change in the interest rate. The interest rate can change at previously scheduled intervals to reflect the movement of a regional or national index measuring prevailing market rates and conditions in accordance with rules and procedures specified in the loan product description and contract documents. The conditions and restrictions herein identify parameters to the selection of those rules and procedures. Both long-term notes where short-term non-amortizing or partially-amortizing loans written at a fixed rate of interest and which is renewed or extended upon maturity at a new rate of interest are addressed herein. If an adjustable rate mortgage loan design component or adjustment procedure is not permitted in these guidelines, it cannot be used until or unless express authority has been granted by the Commissioner. Because it is the intent of this restriction to encourage stabilization of adjustable rate mortgage designs but not to discourage product innovation, all requests for advisory rulings or additions to these guidelines will be handled expeditiously.

1.00 ADJUSTABLE RATE MORTGAGE LOAN PRICE STRUCTURE

- 1.01 General Description. All adjustable rate mortgage loan prices, or interest rates, must be based on the sum of the value of a specific index at a particular point in time plus a margin. The lender may select the point in time during the application process that the index is fixed and the initial interest rate of the loan is set or may allow the borrower to do so. The term "application process" includes the time between the submission of a completed loan application and closing. The margin selected may be a positive number, a negative number, or zero.
- 1.02 Index. A mortgagee may use as an interest rate index any regional or national measure of market rates of interest. The index used may be either a single value as of a particular date or a moving average of a particular measure of rate change over a particular period of time. In either case, the index selected must be readily available to and verifiable by the borrower and beyond the control of the mortgagee or any one bank.

In selecting an index for a particular adjustable rate mortgage loan product, the mortgagee will identify the name of the index and the name of the publication where it can be found in either the mortgage note or in the loan program disclosure required under 209 CMR 32.19(b)(2) and by section (6.01). The Division will equally enforce the requirements of this section whether they are set out in the mortgage note or in the loan program disclosure. The term "most recently available index" will mean that value most recently published in the designated publication prior to the rate setting or rate adjustment time.

- 1.03 Margin. A mortgagee may choose any number of percentage points to add to the index value as a margin at the time the adjustable rate mortgage loan product is designed. The chosen margin is integral both to the structure of the ARM product design and any one loan must remain constant.
- 1.04 Amortization Requirements. The loan may be fully amortized, partially amortized, or non-amortized for up to the first ten years, but payments must then amortize over the remaining term of the loan as required by section 3A of Chapter 167E of the Massachusetts General Laws.
- 1.05 Introductory Discounts. A mortgagee may offer a mortgage loan where the initial interest rate on the mortgage loan is less than the sum of the most recently available index value plus the margin, but only when no cash payment has been made to reduce the interest rate. In that case, the initial rate is determined to be an "introductory discount" and must be referred to as such in all advertising and promotional materials along with information about the regular price of the mortgage loan and information regarding the term. In no case may the amount of interest discounted at origination be carried over or deferred to a future adjustment.
- 1.06 Maximum Term Interest Rate Cap. All adjustable rate mortgage loans must include in the mortgage note a maximum interest rate that may be imposed during the term of the loan in accordance with 209 CMR 32.30(a).

2.00 ADJUSTABLE RATE MORTGAGE LOAN OPTIONS

- 2.01 General Description. The ARM price structure (the most recently available index value plus the margin) may be modified either at origination or at the time of rate adjustment according to rules and procedures specified by any of the following permissible loan options if included in the note at origination.
- 2.02 Buydown. A "buydown" is defined as being a temporary or permanent reduction in the interest rate, below the sum of the index value plus the margin, that is purchased with a cash payment to the mortgagee by either the borrower or a third party. This cash payment may or may not be in the form of "points" over and above those permitted the underwriter for reimbursement of reasonable underwriting expenses or the additional points that may be charged to reimburse the underwriter for expenses paid by the underwriter for the sale of a mortgage loan in the secondary market, as provided for in Administrative Bulletin 13-5 and any subsequent amendments to it. This cash payment must be placed in an escrow account.

The payment differential between the index value plus the margin and the bought-down interest rate shall be drawn from this account on a periodic basis during the term of the buydown. The loan contract must be written at the index value plus the margin and must contain specific information about the source and the amount of the buydown. The rules and procedures for the operation of the buydown and the administration of the escrow account must be specified. If the loan is prepaid before the end of the buydown period, the remaining balance in the escrow account must be returned to the borrower.

2.03 Periodic Adjustment Interest Rate Caps. A mortgagee may choose to limit the amount that the interest rate on an adjustable rate mortgage loan product may change at each adjustment. The cap may be applied to either the base interest rate or the introductory rate, but the chosen method and maximum capped rate must be clearly identified in the note. Each payment adjustment should be considered separately from every other adjustment and should be independently calculated as required in Section (3.03A) before being modified by the periodic adjustment interest rate cap.

2.04 Payment Caps. Increases in the monthly mortgage payment that are indicated by increases in the interest rate of the loan may be limited by per adjustment payment caps. If negative amortization results, the loan balance may increase by that same amount up to the maximum loan-to-value limitations permitted by law.

If another appraisal is requested by either the bank or the borrower for the purpose of establishing a new value to permit a higher level of negative amortization, the party requesting the appraisal shall pay for it. As an alternative to negative amortization, the term of the loan may be extended up to the maximum term allowed by law.

2.05 Convertibility. An adjustable rate mortgage loan may include a provision allowing the mortgagor to elect to convert the mortgage from an adjustable rate to a fixed rate loan. No fees or points may be charged for exercising a loan conversion option.

3.00 INTEREST RATE ADJUSTMENT: CALCULATION AND NOTIFICATION

3.01 General Requirement. Any change made in the interest rate on an adjustable rate mortgage loan over the life of the loan must be directly attributable to the movement of the index in accordance with a formula specified in the original note. The exception is discussed in Section (4.02). No fees or points may be charged in connection with an adjustment except for the reappraisal fee when permitted by Section (2.04).

3.02 Adjustment Interval. The minimum adjustment interval permitted by statute is six months. All adjustment intervals should be of equal length, except that the first adjustment interval may be of unequal length if necessary to establish a master adjustment schedule.

3.03 Adjustment Calculation. The adjustment calculation must be based on the most recently available index as defined in Section (1.02) of these guidelines. The adjustment calculation should include the following:

A. $\text{New Index Value} + \text{Margin} = \text{New Base Rate}.$

B. The new base rate calculated in (A) above should be modified if required by any selected loan options as discussed in Section (2.00).

C. Adjustments made to the payment, loan balance, or term due to the rate change as provided for in the loan design and loan documents should be calculated. If negative amortization will result, the principal balance at the time of the next scheduled adjustment will be included in the notice required in Section (3.04).

All rounding must be to the nearest one-eighth percent at the conclusion of the adjustment calculation. No minimum index movement may be required to justify a rate adjustment calculation. Rate increases are optional; rate decreases are mandatory, within limits permitted by applicable rate caps.

3.04 Timing and Notice of Adjustment. The Adjustment Calculation shall be based on the most recently available index on a fixed number of days, at least 30 but not more than 60 days, prior to the interest rate change date. The number of days selected shall be included in the mortgage note. A written notice which complies with the provisions of 209 CMR 32.20(c) shall be mailed to the borrower no less than 30 but not more than 60 days prior to the scheduled adjustment and shall include all of the details of the adjustment calculation required in Section (3.03) including the actual mathematical calculations.

3.05 Index Replacement. If the selected index ceases to be available during the life of the loan, another index of approximately the same volatility shall be selected by the mortgagee. In these cases the margin specified in the loan documents will be rendered inapplicable, and the value of the substitute index at the time the loan was originated will be identified and subtracted from the base interest rate to calculate the replacement margin. The index and the replacement margin will be used in calculating subsequent interest rate adjustments. All originally selected loan options shall remain in effect.

3.06 Index Selection and Margin Calculation. If, in the case of a balloon payment mortgage written under section 60 of Chapter 183 of the Massachusetts General Laws, where the borrower chooses to have the mortgage loan extended and an index and margin were not identified in the original note, the index for the extended loan will be that index most frequently used for other ARMS being written by the institution. The margin should be calculated by determining the difference between the index value effective on the date the note was written and the interest rate of that note. Adjustment calculation should then follow the procedures set out in Section (3.03).

4.00 PAYMENT ADJUSTMENT: CALCULATION AND NOTIFICATION

- 4.01 Connected with Rate Change. Payment adjustments which are directly attributable to rate changes shall be made in accordance with the procedures set out in Section (3.00).
- 4.02 Connected with Amortization Requirements. Payment adjustments made necessary either to meet requirements to fully amortize a loan after a certain period of time or because the limitations on negative amortization provided for in Section (2.04) have been reached, may take place with at least 30 days notice to the borrower. Such notification shall be in writing and shall contain a full explanation of the circumstances that have led to the payment change and how long that payment will be in effect.

5.00 PRODUCT DESIGN AND APPLICATION PROCESSING

- 5.01 Designing an ARM Loan Product. Any unique combination of the elements of an adjustable rate mortgage loan discussed in sections (1.00), (2.00) and (3.00) constitutes a singular loan product. Once selected, all of these elements are fixed. The number of points to be charged is also considered integral to the product and must remain constant. Each separate loan product must then be separately identified by name or number. The loan application and the note shall include this identification. If any element of the loan product changes, the result is a different loan product which must have its own name or number.

The actual numeric interest rate on the loan is not one of the elements that is fixed at the time of product design. Rather, the method by which the interest rate will be established and the time which the actual interest rate will be determined is the product design element that must remain constant.

- 5.02 ARM Application Processing. For the purpose of establishing exactly which mortgage product the consumer is applying for, all application forms for adjustable rate mortgage loans shall have spaces provided for the identification of the specific loan product being requested. For the purposes of establishing a base point from which to measure performance under Section (5.03), all application forms for adjustable rate mortgage loans shall have spaces provided for the date that the application has been deemed complete.

Lenders may establish their own requirements for what constitutes a completed application under these guidelines except in cases where a fee has been charged to the borrower. In those cases, an application will be deemed complete on the date that the fee becomes nonrefundable in whole or in part.

- 5.03 ARM Product Availability Limitations. The loan product applied for must be made available: (1) if an application form for a particular adjustable rate mortgage loan is accepted by the mortgagee; (2) if the applicant has provided all information requested by the mortgagee within 30 calendar days of the request; (3) if a loan applicant and the applicable real estate collateral both meet all of the credit and regulatory standards for the loan product applied for; and, (4) if the loan is closed within 90 calendar days of the date the application is deemed complete; provided, however, that if the failure to close within said ninety days is due to the mortgagee, any agent thereof, or any attorney protecting the interest of the mortgagee, then such loan product shall continue to be available beyond said ninety days.

If subsequent requests by the mortgagee for additional information beyond that originally requested makes it impossible for the applicant to complete the application process within 30 days, the timetable in (2) and (4) above will be extended to 30 and 90 days after the request for additional information was made. If an applicant does not meet the above time limits, and the product is no longer available, the borrower will be so informed and will be given the opportunity to signify in writing the desire to have the application considered for a different loan product.

6.00 DISCLOSURE REQUIREMENTS

- 6.01 Timing and Contents of Disclosures. Mortgagees must provide all of the disclosures required under 209 CMR 32.19. Copies of the Consumer Handbook on Adjustable Rate Mortgages and the loan program disclosures, required under 209 CMR 32.19(b)(1) and 209 CMR 32.19(b)(2) respectively, must be available in the offices of the mortgagee at all times and must be given to a consumer if and when they first request adjustable rate mortgage information.
- 6.02 Telephone Inquiries. Any consumer telephoning a mortgagee relative to available adjustable rate mortgage loans must be informed about the availability of the items described in Section (6.01).

7.00 MISCELLANEOUS

- 7.01 Reverse Mortgages. These guidelines are not intended to prohibit the development of reverse mortgage loan products which advance the approved loan amount to the consumer in periodic payments over the term of the loan and come due only when the entire amount has been advanced in payments or used to pay interest.

COMMONWEALTH OF MASSACHUSETTS

DIVISION OF BANKS

ADMINISTRATIVE BULLETIN

Ref. No. 13-5 (I)

Issued: September 29, 1980

All Banks, Credit Unions
Mortgagees
G.L. c. 183, § 63
G.L. c. 140, § 90A-90E
G.L. c. 140D, § 4(e)

Memorandum On Regulating The Charging Of Points
In Certain Mortgage Transactions

**AUTHORITY
AND SCOPE**

Chapter 183 of the General Laws of the Commonwealth has been amended by Chapter 385 of the Acts and Resolves of 1980 to include a Section 63 which prohibits the charging of loan fees, finders fees, points, or similar fees on certain mortgage transactions, except to the extent such fees or points constitute reimbursement for reasonable originating or underwriting expenses or expenses involved with participation in the secondary mortgage market. Section 63 also authorizes the Commissioner of Banks to determine what constitutes reasonable originating or underwriting expenses. The purpose of this memorandum is to provide interpretation of Section 63 and guidance for what the Division of Banks believes is reasonable for originating or underwriting expenses.

APPLICABILITY Section 63 and this memorandum apply to mortgage transactions executed on or after October 1, 1980 and involving one-to-four family properties occupied or to be occupied in whole or in part by the mortgagors. For application of the statute and the memorandum, the relevant date of the transaction is considered to be the date at which the mortgagee's commitment to rate and points is accepted formally by the mortgagor.

The covered mortgage transactions include first and certain second mortgage loans made by any mortgagee doing business in the Commonwealth. Excluded from coverage under Section 63 are loans guaranteed in whole or in part by the Veterans Administration, loans insured by the Federal Housing Administration, and second mortgage loans subject to rate controls under Section 90A-90E of Chapter 140 of the General Laws. Point charges on these and other loans not covered by Section 63 of Chapter 183 are, however, subject to previous memoranda on the recognition of point income when imposed by state-chartered depository institutions.

Finally, it is not contemplated that the statute or the memorandum applies to mortgage transactions in which points are paid voluntarily by third parties (for example, builders or corporate employers) on behalf of mortgagors. This, however, should not be construed as an opportunity to circumvent either the spirit or intent of Section 63.

DESCRIPTION The points, expressed as a percentage of the loan amount, and similar fees addressed in this memorandum and contemplated under Section 63 of Chapter 183 fall into three general categories. The first category is points charged as loan discounts or other means of adjusting the interest yields on loans. The second category is points, including that portion of application fees not credited toward payments due at closing, charged as compensation for administrative costs incurred in originating or underwriting loans. The final category is points charged as compensation for participation in the secondary mortgage market. The thrust of Section 63 is to prohibit most charges under the first category while allowing reasonable charges under the second and third.

It should be noted that neither Section 63 nor this memorandum attempt to limit directly charges for credit reports, appraisals, attorney fees, or other expenses which are typically billed separately at the closing of a loan. These are not related to the administrative costs incurred in originating or underwriting a loan as contemplated under Section 63. Such charges are, however, addressed in Section 4(e) of Chapter 140D and must, in accordance with that statute, be bona fide and reasonable or the excesses are included in the finance charge for disclosure purposes. If included in the finance charge, the itemized charges may be subject to Section 63 of Chapter 183.

STANDARDS According to Section 63 of Chapter 183, no points or fees shall be charged in connection with loans addressed in this memorandum where such points or fees constitute loan discounts or other means of adjusting the interest yield on the loans. The only exceptions to this standard are cases where points are necessary to meet the yield requirements of investors in the secondary mortgage market.

According to the same section, no points, including that portion of application fees not credited toward payments due at closing, shall be charged except to the extent they constitute reimbursement for reasonable administrative expenses incurred in originating or underwriting the subject loans. Such charges will be presumed reasonable and in compliance with the statute as long as they do not exceed the following guidelines:

- (1) One point for a first or second mortgage written for a new mortgage customer or written for an existing mortgage customer on a new property.
- (2) One and one half points for a first or second mortgage written for a new mortgage customer or written for an existing mortgage customer on a new property, where the loan involves construction or rehabilitation of the property to be mortgaged and where the improvements constitute at least 25 percent of the initial market or appraised value of the property.
- (3) One half of one point for a first or second mortgage rewritten or refinanced for an existing mortgage customer. (Here, points are to be measured against the entire amount of the new loan.)

- (4) One point for a first or second mortgage rewritten or refinanced for an existing mortgage customer, where the loan involves construction or rehabilitation as defined in (2) above. (Here, points are to be measured against the entire amount of the new loan.)
- (5) One half of one point for a second mortgage written for an existing first mortgage customer on the same property.
- (6) One point for a second mortgage written for an existing first mortgage customer on the same property, where the loan involves construction or rehabilitation as defined in (2) above.

Points and related fees to cover administrative costs may exceed these guidelines but only to the extent they can be justified as reflective of reasonable administrative costs incurred in originating or underwriting loans. The Division of Banks discourages attempts to exceed the guidelines for administrative expenses, particularly where these excesses may be justified on the basis of the mortgage lender assuming the costs of credit reports, appraisals, or other items typically billed separately at closing. Before exceeding the guidelines, the lender is encouraged to attempt to bill these items separately according to reasonable industry standards.

Finally, according to Section 63, points and related fees may be charged to the extent they constitute reimbursement for commitment or other fees paid or to be paid by the mortgage lender for the intended purpose of selling the subject loans in the secondary mortgage market. Here, the Division of Banks recognizes and is prepared to accommodate reasonable charges reflecting expenses incurred prior to closing a loan, expenses incurred subsequent to closing a loan, and expenses anticipated but not actually incurred. Since these charges may vary widely, there is no attempt to establish numerical guidelines or standards. However, the Division interprets Section 63 as requiring both reasonableness over time and good faith intention to sell. These broad standards do not preclude points charged on loans originated but not sold due to unfavorable market conditions or other events, but they do envision a justification of point charges in terms of actions relating to specific loans before and after closing, overall experience in the secondary market, and other factors over time.

MONITORING AND ENFORCE- MENT

The Division of Banks will monitor point charging practices chiefly through its regular process of examination. If, based on an examination or information obtained from other sources, the Division believes that a mortgage lender may be violating Section 63, it will so inform the lender and encourage a change in the lender's policy. Where a lender is unresponsive, punitive measures available to the Commissioner under the General Laws may be imposed or the matter may be referred to the Attorney General of the Commonwealth for further action.

DISCLOSURE

Section 63 of Chapter 183 imposes no application, Truth-in-Lending, or other disclosure requirements beyond those already set forth in the General Laws.

However, if a mortgage lender is charging points and similar fees in excess of the maximum amounts immediately allowable, the Division of Banks encourages the lender to be responsive to any inquiries from prospective borrowers into the excess charges or limitations of Section 63. The lender is encouraged to respond to such inquiries with, at a minimum, a statement to the effect that the statute allows charges sufficient to cover the costs of making a loan and that the charges are subject to review and a finding of reasonableness by the Division. It is believed that this effort will help control any public misunderstanding of Section 63 and the number of inquiries filed with the Division.

MEMORANDUM CHANGES

The guidelines and standards set forth herein may change at some future date at the discretion of the Commissioner.

COMMONWEALTH OF MASSACHUSETTS

DIVISION OF BANKS

ADMINISTRATIVE BULLETIN

Ref. No. 13-5 (II)

November 10, 1982

Point Charging Practices,
Section 63 of Chapter 183,
and Administrative Bulletin 13-5

Over the past several months, there has been much confusion over statutory and administrative limitations on point charges for home mortgages. The confusion arises not only from consumers and legislators but from the mortgage lending industry itself. Specifically, there are misperceptions among certain lenders as to the substance of the point standards and enforcement of the standards by the Division of Banks.

The purpose of this letter is to remind lenders of their responsibilities under Section 63 of Chapter 183 and Administrative Bulletin 13-5 and to correct the lingering misperceptions. Accordingly, the Division advises lenders of the following:

- (1) One point is generally the maximum for new mortgages on existing properties, unless the loans will be sold in the secondary mortgage market.
- (2) Points in excess of one must be justified in relation to commitment fees, delivery fees, and other expenses incurred or anticipated in the course of selling loans in the secondary market. Importantly, participation in the secondary market in no way exempts a lender from the statutory standard of justifying point charges by way of expenses.
- (3) If points are charged in anticipation of secondary market expenses, there must be a reasonable expectation of sales. Mere use of standard documentation is not sufficient to justify excess point charges. Recent sales, market conditions, and performance over time will all be reviewed in determining reasonableness.
- (4) State-chartered institutions collecting points in anticipation of secondary market expenses should, for accounting purposes, defer this income on a basis reasonably related to eventual sales and/or expected loan life.
- (5) The statute and the Administrative Bulletin apply to non-statutory second mortgages, such that excess points on these loans must be justified in terms of secondary market expenses.

The Division expects strict adherence to these standards and will be monitoring compliance closely. If questions arise, lenders should consult the statute, the Administrative Bulletin, or the Division. Your cooperation will be appreciated.

COMMONWEALTH OF MASSACHUSETTS

DIVISION OF BANKS

ADMINISTRATIVE BULLETIN

Ref. No. 13-5 (III)

January 5, 1984

Administrative Bulletin 13-5 Mortgages:
Points, fees, etc. and Section 63 of
Chapter 183, Massachusetts General Laws

1. When the Division issued Administrative Bulletin 13-5 "Memorandum on Regulating the charging of Points in certain Mortgage Transactions" as authorized by Section 63 of Chapter 183 of the Massachusetts General Laws, it attempted to set one point as a maximum amount to be charged for new mortgages unless the mortgages were to be sold in the secondary mortgage market.

2. If the Mortgages are to be sold, the statute clearly allows for the reimbursement of any commitment or other fees paid or to be paid by the mortgagee for the intended purposes of selling mortgage loans in the secondary mortgage market. The use of standard documentation is covered by the first point charged and does not justify additional point charges. Any additional point charges are to be based on fees paid or to be paid for the intended purpose of selling the mortgages. If there is no fee paid or to be paid, then there should be no additional points charged.

3. The purpose of this letter is to remove any lingering misperceptions and/or confusion regarding this Division's effort to insure compliance with Section 63 of Chapter 183 of the Massachusetts General Laws. Therefore, effective immediately, the Commissioner finds that one point constitutes reasonable reimbursement for initial direct costs for originating or underwriting expenses. Points in excess of one must be justified by commitment fees, delivery fees and/or other expenses incurred or anticipated in the course of selling the mortgages in the secondary market.

4. Finally, the Division will monitor point charging practices chiefly through its regular process of examination and expects strict adherence to these standards. If, based on an examination or information obtained from other sources, the Division believes that a mortgage lender may be violating Section 63, it will so inform the lender and encourage a change in the lender's policy. Where a lender is unresponsive, punitive measures available to the Commissioner under the General Laws may be imposed or the matter may be referred to the Attorney General of the Commonwealth for further action.

COMMONWEALTH OF MASSACHUSETTS

DIVISION OF BANKS

ADMINISTRATIVE BULLETIN

Ref No. 13-5 (IV)

March 15, 1986

Amendment to Administrative Bulletin 13-5

A recent review of Administrative Bulletin 13-5 has resulted in a clarification set forth below of the maximum fees or "points" a mortgage lender may charge for refinancing or rewriting existing first or second mortgage loans involving a residential property of four or less units and occupied or to be occupied in whole or in part by the mortgagor.

Massachusetts General Laws Chapter 183, Section 63 prohibits any fee other than reasonable originating or underwriting expenses or expenses involved with participation in the secondary mortgage market.

Accordingly, paragraph 3 of the Standards Section of Administrative Bulletin 13-5, dated September 29, 1980, is hereby amended to read as follows:

- (3)(a) One point for a first or second mortgage loan rewritten or refinanced for an existing mortgage customer. A rewritten or refinanced mortgage loan is one that requires originating or underwriting services similar to an original mortgage loan application.
- (b) No points for the revision of terms of any existing loans, pursuant to Massachusetts General Laws Chapter 167E, Section 6(4).

It should be noted that neither Massachusetts General Laws Chapter 183, Section 63 nor this amendment to Administrative Bulletin 13-5 limits direct charges or expenses incurred which are typically billed at the closing of a mortgage loan, such as credit reports, appraisals, and attorney fees.

COMMONWEALTH OF MASSACHUSETTS

DIVISION OF BANKS

ADMINISTRATIVE BULLETIN

Ref. No. 18-3

Stock Banks

(Restated 1992)

G.L. c. 172, § 31

Reserve Requirements for
State-Chartered Stock Banks

Massachusetts banking statutes require that state-chartered, nonmember commercial banks maintain reserves as prescribed by General Laws chapter 172, section 31. Paragraph C of this section provides the Commissioner of Banks with discretionary authority to either increase or decrease reserves based on prevailing banking conditions.

In light of the federally-mandated reserve requirements established by the Federal Reserve in Regulation D, 12 CFR 204, the interest of the Division of Banks in requiring its own reserves is outweighed by the regulatory and financial burden upon the industry, therefore, as authorized by paragraph C of said section 31, the Commissioner of Banks has determined that the reserve percentage required by paragraph A of this statute be set at zero. Furthermore, unless otherwise provided by the Commissioner of Banks, the filing requirements of paragraph D of said section 31 are suspended.

COMMONWEALTH OF MASSACHUSETTS

DIVISION OF BANKS

ADMINISTRATIVE BULLETIN

Ref. No. 18-8

Credit Unions

(Restated 1992)

G.L. c. 171, §§ 13 and 73

Directive Relative To
Reverse Repurchase Agreements Offered
by State-Chartered Credit Unions

A "reverse repurchase agreement" may be described as a transaction whereby a consumer "purchases" bonds or other securities from a financial institution who in turn promises to buy back or repurchase the bonds or securities at a later date for their full amount plus interest. It is the position of the Division of Banks that with respect to state-chartered credit unions, such transactions are viewed as a "borrowing" of funds by the credit union from its membership or other sources subject to the provisions of c. 171, §§ 13 and 73. This statute requires that the Board of Directors of a credit union receive the approval of the Commissioner of Banks prior to entering into any "borrowing", including, as in this instance, a repurchase agreement. The following information must be submitted as part of the application for the Commissioner's approval:

- (1) A copy of the Board of Director's vote requesting approval of the proposed plan to offer repurchase agreements, certified by the Clerk of the Credit Union.
- (2) The vote specified above must contain information relative to the maximum amount to be borrowed and the length of time such plan will be in effect.
- (3) A statement giving the reasons or the necessity for the credit union to borrow the amount specified in the Board vote.
- (4) A copy of the credit union's last statement of condition and its last two profit and loss closings.
- (5) A sample copy of the Repurchase Agreement Certificate. The collateral securing the loan must be U.S. government-backed bonds or other obligations up to one year maturity. Furthermore, the Certificate must clearly state, in bold type, that the instrument is a repurchase agreement, and is ". . . NOT AN INSURED SHARE OR DEPOSIT ACCOUNT."
- (6) Any such other information as the Commissioner of Banks shall require from time to time.

COMMONWEALTH OF MASSACHUSETTS

DIVISION OF BANKS

ADMINISTRATIVE BULLETIN

Ref. No. 19-4B

Credit Unions

Issued: October 20, 1980

G.L. c. 171, § 75

(Restated 1992)

Rental of Safe Deposit Vaults
and Boxes by State-Chartered Credit Unions

Section 75 of Chapter 171 of the Massachusetts General Laws authorizes state-chartered credit unions to rent safe deposit vaults and boxes (herein referred to as "safe deposit boxes") subject to the written approval of the Commissioner of Banks. The law also authorizes the Commissioner to impose conditions and restrictions relative to the establishment and maintenance of such boxes. Pursuant to this authority, the Commissioner herein establishes conditions and restrictions governing the rental of safe deposit boxes.

A. Request for Approval

The following information must be submitted as part of the request for the Commissioner's approval:

1. A copy of the Board of Directors' vote requesting approval of the proposed plan to rent safe deposit boxes, certified by the Clerk of the Board. Such vote shall specify the hours during which the boxes shall be made available for access by box renters.
2. A copy of the rental agreement. Such agreement shall be in compliance with the requirements of 209 CMR 30.00, the Division of Banks' regulation governing the disclosure of insurance coverage on the contents of safe deposit boxes. All agreements must clearly disclose whether the contents of the safe deposit boxes are insured by the credit union, and if so, the amount and/or extent of such coverage. The agreement must also state in clear terms that the box renter should consider obtaining private insurance on the contents of the box.

3. A description of the security devices to be installed and the procedures to be implemented, in compliance with Part B of this Administrative Bulletin.

B. Minimum Security Requirements

Pursuant to the authority of c. 171, § 75, the Commissioner shall require that the credit union comply with the following conditions relative to the security of safe deposit boxes:

1. Adequate protection, including an approved vault alarm, must be provided at all times. Only boxes of standard construction may be installed.
2. Grill work or some other divider must be installed to separate the area in which the safe deposit boxes are located from that part of the credit union where cash, securities and other assets are stored. The entrance to the vault must be arranged so that box renters may not have access to the tellers' working areas.
3. The operation of the safe deposit box department shall be delegated to one or more employees who shall be responsible for its proper conduct. A proper system for handling the keys of unrented boxes must be put into place. Employees of the credit union shall not handle the keys of rented boxes.
4. Rentals should be confined to members of the credit union or people properly recommended. A system of identification must be maintained and proper records kept showing the name, time of entrance and time of departure of box renters as well as other persons (i.e., employees of the credit union) having access to the safe deposit box area.
5. Booths or rooms used for the inspection of the contents of safe deposit boxes should be inspected immediately after the box renter has withdrawn. Only box renters and employees of the credit union shall have access to such rooms or booths.
6. The safe deposit box area shall be opened to box renters only during the regular business hours of the credit union. If the credit union has evening hours, access to the safe deposit area will be conditioned upon the continued maintenance of proper security measures.
7. These conditions and restrictions are subject to amendment from time to time at the discretion of the Commissioner of Banks.

COMMONWEALTH OF MASSACHUSETTS

DIVISION OF BANKS

ADMINISTRATIVE BULLETIN

Ref. No. 22-1A

Banks and Credit Unions

(Restated 1992)

G.L. c. 167, § 20

Verification of Savings Accounts

1. At least once in each three year period, every bank shall cause its savings accounts in accordance with applicable Generally Accepted Auditing Standards ("GAAS").
2. A credit union shall verify or cause to be verified all share and deposit accounts in accordance with 209 CMR 43.03(5).

COMMONWEALTH OF MASSACHUSETTS

DIVISION OF BANKS

ADMINISTRATIVE BULLETIN

Ref. No. 23-1

All Banks and Credit Unions

(Restated 1992)

G.L. c. 167, § 37B

Conditions and Restrictions Relative
to the Establishment and Operation of School Banks

The following conditions and restrictions are promulgated pursuant to the provisions of G.L. c. 167, § 37B:

1. Each proposal for a school bank under the provisions of G.L. c. 167, § 37B must be submitted upon the recommendation of the superintendent of schools and the affirmative vote of the school committee in the city or town in which the bank is located. In the case of private or parochial schools, each such proposal must be submitted upon the affirmative vote of the governing board.
2. The primary purpose for the establishment of a school bank shall be to conduct said bank as an educational program. To that end, each plan must outline and identify educational goals and objectives.
3. A school bank shall be managed by the students of such school bank under the supervision of a qualified person.
4. Bank services shall be available only to the school's students and school personnel.
5. The school bank may sell shares to or accept deposits from students and school personnel provided that the bank assets do not exceed \$500.
6. The school bank shall operate only during the academic year and shall be liquidated at the close of the academic year; assets shall be distributed at that time on a pro rata basis among the shareholders or depositors.
7. Each proposal must include a plan for the activities to be conducted, i.e., taking of deposits, selling shares, paying interest, making loans.
8. Each proposal must include a schedule for interest paid on deposits or shares, or charged on loans. Such schedules are subject to the approval of the Commissioner of Banks.
9. Each proposal must contain the name of the person in charge.
10. Each proposal must specify the procedures for the handling of cash on the premises, or for depositing funds in a bank account.
11. These conditions and restrictions are subject to amendment from time to time at the discretion of the Commissioner of Banks.

COMMONWEALTH OF MASSACHUSETTS

DIVISION OF BANKS

ADMINISTRATIVE BULLETIN

Ref. No. 23-2

All Banks and Credit Unions

G.L. c. 167C, § 3

Issued: October 17, 1988

G.L. c. 171, § 8

Memorandum on the Establishment of
Branch Offices Located At Educational Facilities

AUTHORITY This memorandum is issued by the Commissioner of Banks under the authority of G.L. c. 167C, § 3 and G.L. c. 171, § 8.

**APPLICABILITY
AND SCOPE** The terms and conditions of this Administrative Bulletin govern the establishment and operation of certain limited purpose branch offices located at educational facilities, pursuant to the provisions of G.L. c. 167C, § 3, and, where applicable, G.L. c. 171, § 8. It does not apply to temporary associations formed for educational purposes under General Laws chapter 167, section 37B.

The purpose of this memorandum is to set forth the Division of Banks' minimum requirements for the establishment of such branch offices. All school branch applications shall be reviewed under the same supervisory standards and procedures accorded to ordinary branch applications. All applicants, however, must also demonstrate, as a matter of record, that a clearly articulated and defined educational and/or vocational training objective will be served by the establishment of the branch. Applications that do not meet these minimum requirements will not be approved by the Commissioner of Banks.

All school branches are subject to state and federal statutory requirements governing state-chartered financial institutions including the posting of all consumer protection and other notices required by law.

DEFINITIONS The following definitions apply to the terms used in this Administrative Bulletin unless the context otherwise requires:

Commissioner: Commissioner of Banks

Division: Division of Banks

Educational Authority: The local school committee or governmental body which governs the affairs of a public educational facility. The term shall also include the Board of Trustees or similar governing body of a private educational institution.

- Educational Facility: A public or private secondary or vocational school located within the Commonwealth.
- Financial Institution: A state-chartered savings bank, co-operative bank, trust company or credit union.
- School Branch: A limited purpose branch office located at an educational facility which is established under G.L. c. 167C, § 3 or G.L. c. 171, § 8 and these guidelines.

PROCEDURES FOR THE ESTABLISHMENT OF BRANCH OFFICES LOCATED AT EDUCATIONAL FACILITIES

General Requirements

A. Application

A financial institution seeking to establish a branch office at an educational facility must make written application to the Commissioner. Such application shall be made on forms supplied by the Division and shall contain: a written notification that the deposits of such branch are insured by a deposit insurance agency; the prior written approval or vote of the appropriate educational authority; an executed written agreement relative to the operation of the school branch office between the financial institution and the educational authority which meets the requirements of paragraph B; a written curriculum plan developed with and approved by the educational authority which meets the requirements of paragraph C; and, such other information as the Commissioner may require from time to time.

B. Operational Agreement

A formal written agreement must be entered into between the educational authority and the financial institution governing the operation of the school branch. Such agreements must be reviewed and renewed annually.

1. Mandatory Provisions

All agreements shall contain provisions relative to the following matters:

- (a) Hours of Operation: The school branch's days and hours of operation during the academic year, and if applicable, during school vacation periods, must be specified.
- (b) Security: The agreement must allocate responsibility for the security of the school branch banking facilities to the financial institution. The agreement must also contain provisions relative to the general security of the areas adjacent to the school branch.

- (c) Liability and Fidelity Insurance: The financial institution shall agree to maintain adequate liability insurance for the school facilities under its control. The branch must also be covered by the financial institution's blanket bond.
- (d) Banking Services: The agreement shall specify the number and types of banking services to be offered at the school branch. If the branch is not open to the general public, the agreement shall also specify to whom the branch's services may be offered.
- (e) Staffing: An adult paid employee of the financial institution must be at the school branch during business hours to supervise its operation. All services provided by the branch must be handled by high school students. Students should be selected by a process agreed upon by the financial institution and the educational authority.
- (f) Student Training: The financial institution shall be responsible for student training done on the financial institution's premises, outside school time, and on school branch premises at all times when the branch is open. The extent of this training shall be set out in the curriculum plan between the financial institution and educational authority.
- (g) Salaries: The agreement shall specify whether participating students will be paid by the financial institution. The payment of students, whether during training or while working in the branch, is a matter to be agreed upon by the financial institution and the educational authority.
- (h) Termination of Branch: The agreement shall provide that neither the financial institution nor the educational authority shall close or move the school branch until all necessary regulatory approvals have been obtained.

2. Optional Provisions

Agreements relative to school branches may contain the following optional provisions:

- (a) Signage: Any reasonable provision relative to the design, size or placement of the name or logo of the school branch.
- (b) Branch Maintenance: Any reasonable provision relative to the construction, remodeling or repair of the school branch facilities.
- (c) Other Provisions: An agreement between a financial institution and an educational authority may contain any other provision relative to the establishment and operation of a school branch that the parties may deem necessary.

C. Curriculum Plan

A school branch is an educational facility to be used for the training of students, on school premises, in the basic principles and practices of banking by actual participation in a branch operation. A curriculum plan, therefore, should be designed that achieves these objectives in accordance with accepted educational standards. All such curriculum plans must be drafted and approved by the educational authority prior to the submission of a school branch application.

COMMONWEALTH OF MASSACHUSETTS

DIVISION OF BANKS

ADMINISTRATIVE BULLETIN

Ref. No. 24-1

Issued: 1984

Savings Banks, Co-operative
Banks and Trust Companies
G.L. c. 167D, § 2

Insufficient Fund Charge Guideline and
Opinion Relative To
Chapter 230 of the Acts of 1984
Governing Savings and Checking
Accounts of Certain Depositors

Chapter 230 of the Acts of 1984, in summary, prohibits a bank, as defined in § 2 of Chapter 167D of the General Laws, from imposing any fee, charge or other assessment against the savings account or checking account of any persons sixty-five years of age or older or eighteen years of age or younger. However, the Act specifically provides that a reasonable charge, as determined by this Division, may be assessed against any such account of any such persons when payment has been refused because of insufficient funds on any check drawn on such account.

Pursuant to the requirements of the Act, this Division has determined that a charge to be assessed for a check drawn on the account of such a person but refused because of insufficient funds shall not exceed \$5.00 per check.

Although this Act followed the traditional legislative process and, in fact, was amended from the original petition a number of issues have been raised as to the extent of its coverage. This Division has received a significant volume of inquiries and a request for an opinion on several of the Act's provisions. But there are limits, grounded in the language, purpose and history of a particular statute, on how far an agency may go in its interpretive role.

Accordingly, the following response may not resolve each question that has been raised in the minds and inquiries of those affected by its provisions. Fortunately, the Legislature which passed the Act remains in session and is the final forum, should it choose to act for resolution of these issues.

In issuing this opinion, the Division of Banks is aware, as was the Legislature, that some institutions, prior to the passage of this Act, had voluntarily exempted from their schedule of fees, charges and assessments one or both of the particular age groups addressed by this statute. Although this opinion may be viewed as a safe harbor until further legislative action occurs it is not intended to encourage, in any way, retrenchment by those institutions from any existing policies which may exceed not only the particulars of this response but also those of the statute itself.

Accounts Subject to the Provisions of This Act

Questions have been raised relative to the scope of the accounts covered by the Act and whether each type of account must be provided to an eligible depositor.

As with any issue involving the interpretation of an Act the analysis must begin with the language of the statute itself. Chapter 230 specifically refers to a "savings account" and to a "checking account". Those terms although central to the analysis of this Act are not defined within the applicable statutes. Clearly, if the Legislature had spoken more specifically the task would be simple. However, the Division of Banks has a long history of attributing to the Legislature an intelligent and intelligible policy and of fitting new statutes into the existing framework in an effort to make a coherent whole. Therefore, rather than resorting to definitions contained in regulations of a federal agency or in non-banking statutes the Division has reviewed the existing deposit statutes from the perspective of its understanding of the purpose of this Act.

Chapter 590 of the Acts of 1983, in part, eliminated a specific reference to savings deposits within Chapter 167D of the General Laws. As amended by that Act the statute now provides for demand, time and other types of deposits. One thrust for that amendment was recognition of the various types of deposits which would result from the ongoing deregulation of the deposit side of the balance sheet. The initial lack of classification of the Money Market Deposit Account by federal regulators was an example of that deregulation. In light of the lack of defined terms, the variety of deposit accounts now available and this Division's understanding of the purpose of Chapter 230 it is the opinion of this Office that the terms savings account and checking account should be given what may be viewed as their traditional meaning. Accordingly, "checking" would be a demand deposit account while "savings" would include a passbook or a statement account and a regular NOW account. In response to specific inquiries a Super NOW and Money Market Accounts would not be governed by the provisions of Chapter 230.

Since the prohibitions of this Act are keyed to each such account this Office does not agree with a reading of this statute which would infer that only one of either a savings account or a checking account per eligible depositor is required for compliance.

Depositor Eligibility

Questions have been raised regarding depositor eligibility relative to the definition of "persons", the law's applicability to accounts on which all parties are not within the specified age groups, and whether the Act affects existing depositors.

Another threshold issue raised by the language of the Act is which "persons" are covered by the law. In construing statutes there is within the General Laws a provision, section 7 of chapter 4, whereby various terms are defined. It is that section of law which generally provides that the word "person" includes business related entities. However, that section allows for a different interpretation if a contrary interpretation clearly appears. Viewing the language of this Act with its criteria of age as well as its underlying purpose, it is the opinion of this Division that the accounts covered by this Act are limited to those held by consumers for non-business purposes. The issue of eligibility is also raised when more than one person is a party to an applicable account and all such parties do not meet the age requirements specified in the Act.

The crucial question here is did the Legislature intend to establish a general prohibition for the imposition of fees, charges or assessments for any account to which a person meeting the age requirements is a party. The plain language of Chapter 230, weighs against implication of such a general prohibition. If so intended, language stating such coverage could have been inserted. However, recognition must also be given to the purpose of this particular statute. In so doing, this Division concludes that the Legislature did not intend this Act to result in widespread disruption of account relationships the nature of which do not lend themselves to potential abuse of the benefits provided by the Act. Therefore, it is the opinion of this Division that in order to be eligible for the coverage of this law all parties to an applicable account must meet the age requirements specified therein unless the only party not meeting such requirements is the spouse of the eligible depositor.

Although it has been argued that the coverage of this Act should be prospective it is the opinion of this Division that eligibility for the benefits of this law extends to existing account holders as well as new depositors.

Implementation of Chapter 230

The statute does not specify a process whereby a bank is to determine those depositors eligible for the protections afforded by this law and questions have been raised as to how this should be accomplished.

It is the opinion of this Division that a bank can comply with the provisions of this Act by a two step process consisting of notice and registration. Since banks are generally not aware of the age of depositors and depositors may not be generally aware of the passage of Chapter 230 the first step should be for institutions to provide depositors with specific information on the coverage of the law. Such notice should be accomplished by conspicuous posting in all offices and disclosure in any periodic account statement. Concurrent with such notice each bank should provide a registration form requesting therein only that information and proof necessary to implement the statute. After a bank has initiated such a process the responsibility would rest with each depositor to come forward and identify himself as eligible under the Act. Once such eligibility has been established the responsibility to terminate a depositor's enjoyment of these benefits upon reaching age 19 would lie with the bank.

Type of Fees Covered

A number of questions have been raised relative to the scope of the "fees, charges and assessments" covered by the Act. In summary, some argue that there should be a distinction made between a fee and payment for what is called a separate service, such as a wire transfer and numerous other acts. Alternatively, questions are raised as to whether such "services" may be charged to another account, or could a person waive the protection provided by the statute.

Focusing once again on the language of Chapter 230 this Division finds no suggestion of a distinction for services. By its terms the prohibition runs against the account itself and not the nature of what it is being assessed for. The words used "any fee, charge or other assessment" are so broad as to be inclusive of all acts relative to an applicable account except for the charge for insufficient funds. However, any charges mandated by federal rate control can be assessed against an applicable account since this statute would be preempted.

In conjunction with this interpretation this Division would view any assessment against a separate account for a transaction involving an account covered by the Act to be a clear circumvention of the law.

Moreover, the statute does not specifically provide for a consumer to waive the protections offered by the Act. However, the affirmative obligation on a depositor to come forward to exhibit eligibility, as outlined previously, provides the depositor the opportunity to effectively waive these protections by simply not establishing eligibility.

Varied Terms and Conditions

The issue has been raised that since Chapter 230 does not restrict a bank's authority to set other terms and conditions on accounts of eligible depositors a bank could, under current law, choose to vary the interest rate, minimum balances or, in the extreme, not offer such accounts to those depositors covered by the Act.

In seeking to address those questions and inquiries that have been fairly raised this Division has focused on the language of Chapter 230 and the body of law which it amends. Where appropriate, consideration has been given to our understanding of the history and Legislature's purpose in enacting this statute. It is the conclusion of this Division that significant weight must be given to the purpose of this Act when considering this issue in light of the silence of Chapter 230 and the authority existing in current law. The purpose of Chapter 230, as understood by this Division, is solely to add a feature - no fees, charges or assessments - to the accounts of those depositors meeting the age requirements set out in the law. A bank's general ability to structure the terms and conditions of accounts if used to diminish, in any way, the account of only those depositors eligible for the benefit afforded by Chapter 230 would result in a clear violation of the spirit of that law.

Penalties, Enforcement

As enacted Chapter 230 does not set out any specific penalty for non-compliance. The question has thus been asked as to how enforcement will be handled and what penalties may be imposed.

To enforce the statutory provisions of Chapter 230 this Division will exercise those powers and impose those penalties granted under the general banking statutes, such as section 12 of Chapter 167, and under the applicable chapter of the General Laws governing each institution.

COMMONWEALTH OF MASSACHUSETTS

DIVISION OF BANKS

ADMINISTRATIVE BULLETIN

Ref. No. 24-2

Issued: December 22, 1992

All State-chartered
Savings, Co-operative
Banks and Trust Companies
G.L. c. 167D, § 2

Guidance on Compliance With
the Provisions of General Law Chapter 167D § 2
the "18-65 Law"

AUTHORITY
AND SCOPE

These guidelines are issued under the authority of G.L. c. 167D, § 2. The purpose of these guidelines is to provide state-chartered banks with guidance on how to comply with the provisions of the "18-65 law" so called. This Bulletin is arranged in a question and answer format in order to provide useful and practical information to institutions and individuals seeking information on the scope of the 18-65 law and its implementing directive, Administrative Bulletin 24-1. Institutions with additional questions or concerns should refer to the administrative bulletin and the statute for additional guidance on the law's scope.

QUESTIONS
AND ANSWERS

1. What checks are free of printing charges?

The institution's basic line of checks is covered by the 18-65 law. These checks must be provided free of charge to any person falling within the protected categories of the 18-65 law.

2. Does a "basic check" include the account holder's name only?

Yes. Most banks and merchants now require the drawer's name to be imprinted on the face of a check before it will be cashed or accepted. Since blank checks are not generally accepted, all 18-65 account checks must have this minimum data imprinted without charge. The 18-65 law, however, does not require that specially designed, or custom, checks or imprints be provided to 18-65 customers. If these individuals choose these special design features, they may be charged the full price of such check line.

3. Are withdrawals in the form of a certified check, bank check or money order free of charge?

Yes. G.L. c. 167D, §2 specifically prohibits all types of fees or charges on the accounts of protected account holders. Consequently, all fees other than those expressly specified by the statute or Administrative Bulletin are prohibited.

4. Are fees for ATM card transactions prohibited?

No. Fees may be charged if the use of an ATM is an optional account feature. Fees would be prohibited, however, if an ATM is the only permitted means of access to the protected account.

5. Are fees for a Stop Payment Order prohibited?

Yes. See Question 3.

6. Are fees for wire transfer prohibited?

Yes. See Question 3.

7. Are fees for the return of an unpaid, or NSF, check drawn on the accounts of another prohibited?

Yes. See Question 3.

8. Must only one account (savings or checking) be offered to a qualifying person?

No. Administrative Bulletin 24-1 specifically states that a qualifying individual is entitled to receive one savings and one checking account.

9. May a bank choose which accounts are subject to the 18-65 law?

No. All existing checking and savings accounts must be made available to an 18-65 customer.

10. May a bank require an adult cosigner on a minor's account?

Yes. The 18-65 law does not prohibit a bank policy requiring adult cosigners for minor accounts. Such accounts remain protected under the statute.

11. Is a trust account established for the benefit of a minor subject to the 18-65 statute?

No. A minor is only the beneficiary of a trust account. The account is a separate entity from the minor which can be accessed by a non-qualifying person under the 18-65 law. Therefore, it is not a minor's account and not covered by the 18-65 law.

12. Does the 18-65 law's benefits end on a person's 18th birthday?

No. The 18-65 law protection continues until the person reaches 19 years of age.

13. Must notice of the 18-65 law be posted in all of the Bank's offices?

Yes. A notice informing customers of the availability of 18-65 protection must be posted within all banking offices. The location and size of such notice are left to the discretion of Bank management. All notices, however, are subject to examiner review and comment.

14. Must there be an annual disclosure of the 18-65 law to all customers?

Yes. No particular form of annual notice is specified by the 18-65 law or this Administrative Bulletin. An annual disclosure placed in a monthly account statement would be deemed sufficient.

15. Must an eligible person formally notify, or register with, a bank in order to obtain the 18-65 law's benefits?

Yes. Anyone eligible for an 18-65 account has the burden of notifying their bank of his or her status. A bank is not liable for any fees assessed to an account prior to notification or registration.

16. Is there a maximum insufficient fund charge under the 18-65 law?

Yes. The current maximum charge for an insufficient funds fee is \$5 as set by Administrative Bulletin 24-1. This maximum charge may be subject to future change.

COMMONWEALTH OF MASSACHUSETTS

DIVISION OF BANKS

ADMINISTRATIVE BULLETIN

Ref. No. 25-1

Issued: October 3, 1985

State-Chartered Banks
Federally-Chartered Banks
G.L. c. 167, § 21

Guideline Relative To
The Temporary, Non-Mandatory Closing of Bank Offices

Section 21 of Chapter 167 of the General Laws sets out three separate and independent authorities by which both state-chartered and federally-chartered banking institutions may choose to close their banking offices due to various circumstances. The powers contained in the section are vested in the Governor, the Commissioner and the officers of each such institution. In each instance the final determination to close, however, rests with the bank itself. That determination process was facilitated by a 1979 amendment which eliminated the need for prompt notice to the Commissioner when closing an office. This guideline not only applies to those weather-related situations which affect the Commonwealth on a statewide basis but also to all localized situations involving businesses in general or particular offices of any single bank. It has been established in order to clarify in writing and in advance of any future applicable situation the policy of this Division relative to such closings. Having issued this guideline the Division believes it is now incumbent on each institution to advise the appropriate personnel of the decision making process within that bank and the manner in which any decision to close will be disseminated throughout the bank's branch system. The establishment of such a process and information network will eliminate calls to this Division at a time when phone lines may be needed primarily for emergency purposes as well as at times when the staff of this Division may be required to remain at home or, for safety reasons, are prevented from entering state office buildings. The Division strongly encourages each institution to maintain copies of this guideline in each of its places of business along with the names of the bank officers designated to make a decision to close. The guideline is stated below.

For weather-related circumstances affecting the Commonwealth in general, the Division of Banks will not issue a public announcement, separate from the Governor, authorizing banking institutions to close their offices. Accordingly, banks considering such a closing should listen for and conform to any proclamation by the Governor requesting the people of the Commonwealth to close their places of business.

Banks are also advised that it is the firm position of this Division that the authority in section 21 for the officers of a bank to close their business offices when "conditions exist which pose an existing or imminent threat to the safety or security of bank personnel or property generally" includes, among other things, weather-related situations. Therefore, banks may rely on that authority alone to make such a decision. Institutions are further advised that the statute provides that any day in which an office is so closed shall not be considered a business day and acts may be performed on the next succeeding business day without liability or loss of rights regardless of whether the decision to close is requested by the Governor, the Commissioner or made by the officers of the bank. Any bank making such a decision is reminded of the statutory requirement to enter the cause and time of such closing in the records of the next meeting of the appropriate board. The authority to re-open offices is also set out in this statute.

For all other circumstances addressed by the statute whether such circumstances affect only parts of the Commonwealth, banks in general or an office or offices of a particular institution, the same policy will apply. This Division would be hard pressed to find a situation posing "an existing or imminent threat to the safety or security of bank personnel or property generally" which did not justify an officer's decision to temporarily close an office to the public. Although the Division appreciates being informed of local conditions affecting an institution, it wishes to emphasize that the safety of personnel may be obtained and property made secure without prior approval or notice of this Division.

If a decision to close is made in advance of an approaching situation covered by the statute, adequate notice to the banking public should be posted at each office.

Section 21 pertains to non-mandatory closing of banking offices. It should be noted that other laws authorize the Governor after declaring a general state of emergency for any disaster to subsequently issue specific orders to regulate, among other things, the closing and openings of all businesses, including banks. Additionally, the Governor may declare a banking emergency when the banking system is at risk and thereby may order, through the Commissioner, that banks be closed. Those emergency powers referred to above are set out, respectively, in special Acts of the Legislature which became law as Chapter 639 of the Acts of 1950, providing for the safety of the Commonwealth during the existence of an emergency resulting from disaster or from hostile action, and Chapter 59 of the Acts of 1933 relative to banking emergencies.

COMMONWEALTH OF MASSACHUSETTS

DIVISION OF BANKS

ADMINISTRATIVE BULLETIN

Ref. No. 26-1

All Banks

Issued: June 30, 1986

G.L. c. 167, § 6

Directive Governing The Issuance Of Subordinated Debt
Securities For Consideration In Meeting Regulatory
Capital Requirements

Requirements Applicable To Issuance

A state-chartered financial institution, other than a credit union, issuing subordinated debt securities for consideration in meeting the capital requirements of the Division of Banks must comply with the following requirements. An offering circular and certificate, as specified below, must be submitted in advance to the Commissioner of Banks. No such circular or form shall be distributed until such materials have been released for use, in writing, by the Commissioner.

The term to maturity for any such security shall not be less than seven years. No such security shall be issued in a denomination of less than \$1,000. Subordinated debt securities shall be unsecured.

Requirements Applicable To The Offering Circular

A bank issuing such debt securities shall utilize an offering circular that provides adequate disclosures of material facts so that prospective investors may be capable of making an informed decision.

Each such circular shall contain:

(1) the following statements on the cover in capital letters printed in bold-face roman type at least as high as ten-point modern type and at least two points leaded:

(a) "This security is not a savings account or deposit and it is not insured by (name of primary insurer and, if applicable, of excess insurer)";

(b) "The securities are subordinated on liquidation, as to principal, interest and premium, if any, to all claims against the bank having the same or higher priority as deposits and savings accounts";

(c) "The securities are not eligible as collateral for any loan by (name of issuing bank)"; and

(d) "The securities have not been approved or disapproved by the Commissioner of Banks, nor has the Commissioner passed upon the accuracy or adequacy of this offering circular. Any representation to the contrary is unlawful.");

(2) the name, address, principal place of business and telephone number of the issuing bank;

(3) the amount and title of the securities being offered;

(4) the offering price and proceeds to the bank on an aggregate basis;

(5) the plan and cost of distribution;

(6) the reason for the offering and the purposes for which the proceeds are to be used;

(7) a brief description of the material risks, if any, involved in the purchase of the securities;

(8) a description of the present and proposed business operations of the bank and its capital structure;

(9) the principal officers and directors or trustees of the bank and, for stock corporations, the principal stock holders and the amount of stock owned by each;

(10) the remuneration and interest in recent or proposed transactions of management and, for stock corporations, the principal stock holders and their associates;

(11) a brief description of any material pending legal proceedings;

(12) a summary of any material terms and restrictions applicable to the securities; and

(13) the following financial statements, including notes to such statements:

(a) balance sheets as of the two preceding fiscal year-ends and of the latest quarterly interim for the period that ends not later than 90 days from the date of the offering circulars; and,

(b) statements of income for the preceding two fiscal years and for the most recent quarter that ends not later than 90 days from the date of the offering circular.

Requirements Applicable To The Form of Certificate

Each certificate evidencing subordinated debt by a bank shall:

- (1) bear on its face, in bold-face type, "This security is a subordinated, unsecured obligation of the bank. It is not a savings account or savings deposit and it is not insured by (name or primary insurer and, if applicable, of excess insurer). It is not eligible as collateral for any loan by the issuing bank";
- (2) be in a minimum denomination of \$1,000; and
- (3) not be issued for a period to maturity of less than 7 years.

Applicability Towards Regulatory Capital

Neither existing statute nor this directive limits the total amount of debt securities which may be issued by a state-chartered bank. However, this Division will include in the calculation of its regulatory capital requirements that amount of such debt securities issued in accordance with this directive, which in the aggregate does not exceed fifty per cent of the capital stock, surplus account and undivided earnings for a stock corporation or fifty per cent of the surplus account for a mutual thrift institution.

COMMONWEALTH OF MASSACHUSETTS

DIVISION OF BANKS

ADMINISTRATIVE BULLETIN

Ref. No. 27-1

Credit Unions

Effective: October 13, 1986

G.L. c. 171, § 59
Paragraph (6)

Memorandum On Adjustable Rate Personal Loans

AUTHORITY

Paragraph 6 of Section 59 of Chapter 171 of the Massachusetts General Laws authorizes state-chartered credit unions to make adjustable rate personal (also referred to herein as ARP) loans. The law also authorizes the Commissioner of Banks to impose conditions and restrictions on these loans. Pursuant to this authority, the Commissioner herein establishes conditions and restrictions governing adjustable rate personal loans.

This Administrative Bulletin is effective October 13, 1986 and applies to adjustable rate personal loans for which applications are received on or after that date.

DESCRIPTION

An adjustable rate personal loan has features -- usually the payment, the term, or the principal balance -- which can change to reflect a change in the interest rate. The interest rate can change at previously scheduled intervals to reflect the movement of a regional or national index measuring prevailing market rates and conditions in accordance with rules and procedures specified in the loan product description and contract documents. The conditions and restrictions herein identify parameters to the selection of those rules and procedures.

1.00 ADJUSTABLE RATE PERSONAL LOAN PRICE STRUCTURE

1.01 General Description. All adjustable rate personal loan prices, or interest rates, must be on the sum of the value of a specific index at a particular point in time plus a margin. The credit union may select the point in time during the application process that the index is fixed and the initial interest rate of the loan is set or may allow the borrower to do so. The term "application process" includes the time between the submission of a completed loan application and payout of the proceeds. The margin selected may be a positive number, a negative number, or zero.

1.02 Index. A credit union may use as an interest rate index any regional or national measure of market rates of interest.

The index used may be either a single value as of a particular date or a moving average of a particular measure of rate change over a particular period of time. In either case, the index selected must be readily available to and verifiable by the borrower and beyond the control of the credit union.

In selecting an index for a particular adjustable rate personal loan product, the credit union will identify the name of the index and the name of the publication where it can be found in the note. The term "most recently available index" will mean that value most recently published in the designated publication prior to the rate setting or rate adjustment time.

- 1.03 Margin. A credit union may choose any number of percentage points to add to the index value as a margin at the time the adjustable rate personal loan product is designed. The chosen margin is integral both to the structure of the ARP loan product design and any one loan and must remain constant.
- 1.04 Amortization Requirements. The loan may be fully amortized, partially amortized, or non-amortized as allowed by Section 59 of Chapter 171 of the Massachusetts General Laws.
- 1.05 Introductory Discounts. A credit union may offer an ARP loan where the initial interest rate on the loan is less than the sum of the most recently available index value plus the margin, but only when no cash payment has been made to reduce the interest rate. In that case, the initial rate is determined to be an "introductory discount" and must be referred to as such in all advertising and promotional materials along with information about the regular price of the loan and information regarding the term. In no case may the amount of interest discounted at origination be carried over or deferred to a future adjustment.

2.00 ADJUSTABLE RATE PERSONAL LOAN OPTIONS

- 2.01 General Description. The ARP price structure (the most recently available index value plus the margin) may be modified either at origination or at the time of rate adjustment according to rules and procedures specified by any of the following permissible loan options if included in the note at origination.
- 2.02 Rate Caps. A credit union may choose to limit the amount that the interest rate on an adjustable rate personal loan product may change at each adjustment and/or over the life of the loan. The caps may be applied to either the base interest rate or the introductory rate, but the chosen method and maximum capped rate must be clearly identified in the note. Each payment adjustment should be considered separately from every other adjustment and should be independently calculated as required in Section (3.03A) before being modified by the periodic rate cap.
- 2.03 Payment Caps. Increases in the monthly loan payment that are indicated by increases in the interest rate of the loan may be limited by per adjustment payment caps.

If negative amortization results, the loan balance may increase by that same amount up to maximum loan-to-value limitations permitted by law. As an alternative to negative amortization, the term of the loan may be extended up to the maximum term allowed by law.

- 2.04 Convertibility. An adjustable rate personal loan may include a provision allowing the borrower to elect to convert the ARP loan from an adjustable rate to a fixed rate loan. No fees may be charged for exercising a loan conversion option.

3.00 INTEREST RATE ADJUSTMENT: CALCULATION AND NOTIFICATION

- 3.01 General Requirement. Any change made in the interest rate on an ARP loan over the life of the loan must be directly attributable to the movement of the index in accordance with a formula specified in the original note. The exception is discussed in Section (4.02). No fees may be charged in connection with an adjustment.

- 3.02 Adjustment Interval. The minimum adjustment interval permitted by statute is six months. All adjustment intervals should be of equal length, except that the first adjustment interval may be of unequal length if necessary to establish a master adjustment schedule.

- 3.03 Adjustment Calculation. The adjustment calculation must be based on the most recently available index as defined in Section (1.02) of these guidelines. The adjustment calculation should include the following:

A. $\text{New Index Value} + \text{Margin} = \text{New Base Rate}.$

B. The new base rate calculated in (A.) above should be modified if required by any selected loan options as discussed in Section (2.00).

C. Adjustments made to the payment, loan balance, or term due to the rate change as provided for in the loan design and loan documents should be calculated. If negative amortization will result, the principal balance at the time of the next scheduled adjustment will be included in the notice required in Section (3.04).

All rounding must be to the nearest one-eighth percent at the conclusion of the adjustment calculation. No minimum index movement may be required to justify a rate adjustment calculation. Rate increases are optional; rate decreases are mandatory, within limits permitted by applicable rate caps.

- 3.04 Timing and Notice of Adjustment. The Adjustment Calculation shall be based on the most recently available index on a fixed number of days, at least 30 but not more than 60 days, prior to the interest rate change date. The number of days selected shall be included in the loan note. A written notice shall be mailed to the borrower prior to the scheduled adjustment and shall include all of the details of the adjustment calculation required in Section (3.03) including actual mathematical calculations.

- 3.05 Index Replacement. If the selected index ceases to be available during the life of the loan, another index of approximately the same volatility shall be selected by the credit union. In these cases the margin specified in the loan documents will be rendered inapplicable, and the value of the substitute index at the time the loan was originated will be identified and subtracted from the base interest rate to calculate the replacement margin. The index and the replacement margin will be used in calculating subsequent interest rate adjustments. All originally selected loan options shall remain in effect.

4.00 PAYMENT ADJUSTMENT: CALCULATION AND NOTIFICATION

- 4.01 Connected with Rate Change. Payment adjustments which are directly attributable to rate changes shall be made in accordance with the procedures set out in Section (3.00).
- 4.02 Connected with Amortization Requirements. Payment adjustments made necessary either to meet requirements to fully amortize a loan after a certain period of time or because the limitations on negative amortization provided for in Section (2.03) have been reached, may take place with at least 30 days notice to the borrower. Such notification shall be in writing and shall contain a full explanation of the circumstances that have led to the payment change and how long that payment will be in effect.

5.00 PRODUCT DESIGN AND APPLICATION PROCESSING

- 5.01 Designing an ARP Loan Product. Any unique combination of the elements of an adjustable rate personal loan discussed in Sections (1.00), (2.00), and (3.00) constitutes a singular loan product. Once selected, all of these elements are fixed. Each separate loan product must then be separately identified by name or number. The loan application and the note shall include this identification. If any element of the loan product changes, the result is a different loan product which must have its own name or number.

The actual numeric interest rate on the loan is not one of the elements that is fixed at the time of product design. Rather, the method by which the interest rate will be established and the time which the actual interest rate will be determined is the product design element that must remain constant.

- 5.02 ARP Application Processing. For the purpose of establishing exactly which loan product the consumer is applying for, all application forms for adjustable rate personal loans shall have spaces provided for the identification of the specific loan product being requested. Credit unions may establish their own requirements for what constitutes a completed application under these guidelines.

COMMONWEALTH OF MASSACHUSETTS

DIVISION OF BANKS

ADMINISTRATIVE BULLETIN

Ref. No. 28-1

Credit Unions

Issued: May 16, 1988

G.L. c. 171, § 21

Fidelity Bond Coverage Requirements
for State-Chartered Credit Unions

The Commissioner of Banks is charged with determining the minimum acceptable fidelity surety bond coverage for certain officers, directors and employees of state-chartered credit unions pursuant to Massachusetts General Laws, c. 171, §21. Regulatory requirements relative to minimum bond coverage for such credit union officers have remained constant for the past several years. A change in the amount of acceptable minimum fidelity bond coverage for credit union officers, directors and employees, however, is warranted at the present time.

Therefore, pursuant to Massachusetts General Laws, c. 171, § 21, the following minimum fidelity bond requirements shall be in effect, as of October 1, 1988, for all state-chartered credit unions:

<u>Assets</u>	<u>Minimum Bond</u>
\$1 to \$ 25,000	\$10,000
\$25,001 to \$ 100,000	\$25,000
\$100,001 to \$ 300,000	\$50,000
\$300,001 to \$ 500,000	\$75,000
\$500,001 to \$ 1,000,000	\$100,000
\$1,000,001 to \$50,000,000	\$100,000 plus \$50,000 for each million or fraction thereof over \$1,000,000
\$50,000,001 to \$295,000,000	\$2,550,000 plus \$10,000 for each million or fraction thereof over \$50,000,000
Over \$295,000,000	\$5,000,000

State-chartered credit unions shall only obtain fidelity bond coverage from companies approved by the Commissioner of Banks. Such fidelity bond coverage shall also be on standard forms approved by the Commissioner. The Division recommends, but does not require, faithful performance coverage for all directors, officers and employees. Additional bond coverage should also be obtained by credit union if its Board of Directors, upon an annual review, determine that such additional protection is required by conditions peculiar to the credit union.

The Commissioner's prior written approval must be obtained for any reduction in fidelity bond coverage.

COMMONWEALTH OF MASSACHUSETTS

DIVISION OF BANKS

ADMINISTRATIVE BULLETIN

Ref. No. 28-2

Credit Unions

Issued: April 17, 1990

G.L. c. 171, § 21

Notice of Fidelity Bond
Coverage Termination

AUTHORITY This directive is issued under the authority of General Laws, c. 171, § 21.

**APPLICABILITY
AND SCOPE** This Administrative Bulletin supplements the general fidelity bond requirements for state-chartered credit unions found in Administrative Bulletin 28-1. It specifically governs the manner in which the Division of Banks shall be notified of the cancellation or termination of a state-chartered credit union's fidelity bond coverage by its surety company.

**NOTIFICATION
REQUIREMENTS** Effective October 1, 1990, all fidelity bonds must include a provision, in a form approved by the Commissioner of Banks, requiring written notification by the surety company to the Division of Banks: (1) when the bond of a credit union is terminated in its entirety; or (2) when bond coverage is terminated, by issuance of a written notice, on an employee, director, officer, audit or credit committee member. Said notification shall be sent to the Division and shall include a brief statement of the cause for termination.

COMMONWEALTH OF MASSACHUSETTS

DIVISION OF BANKS

ADMINISTRATIVE BULLETIN

Ref. No. 29-1

Issued: May 16, 1988

All Banks

G.L. c. 167, § 7

G.L. c. 167, § 13

G.L. c. 168, § 26

G.L. c. 170, § 18

G.L. c. 172, § 22

Directive Governing the Filing of
Annual Call Reports by
State-Chartered Financial Institutions

AUTHORITY

This directive is issued by the Commissioner of Banks under the authority of Massachusetts G.L. c. 167, § 7; G.L. c. 167, § 13; G.L. c. 168, § 26; G.L. c. 170, § 18 and G.L. c. 172, § 22.

**APPLICABILITY
AND SCOPE**

The terms and conditions of this Administrative Bulletin govern the making of "call reports", the statements, returns, and reports to the Commissioner of Banks under the above cited statutory authorities, by state-chartered savings banks, co-operative banks and trust companies. This directive, however, does not govern similar reports filed by state-chartered credit unions.

The information and data contained in call reports are used, among other things, to prepare the Commissioner of Banks' Annual Reports to the General Court as mandated by G.L. c. 167, § 13. This information is also utilized by the Division of Banks and the public for general research and statistical purposes.

The purpose of this Directive is to reduce the amount of information currently required to be submitted by financial institutions. The goal is to eliminate duplicate filings resulting from the recent insurance of all state-chartered financial institution's deposits by federal deposit insurance agencies.

This directive shall govern the filing of Annual Call Reports for the period ending December 31, 1988 and all other subsequent years.

CALL REPORT REQUIREMENTS

- I. Two (2) sets of the following information, statements and reports shall be submitted to the Commissioner of Banks on or before February 1, of each year, covering the year ending the preceding December 31, by all state-chartered savings banks, co-operative banks and trust companies:
 - A. A certified copy of the Consolidated Reports of Income and Condition filed by the financial institution with its federal deposit insurer for the period ending at the close of business, December 31 of each year;
 - B. A report, on forms supplied by the Division of Banks, containing the following information;
 - (1) The locations of the institution's main office and branches,
 - (2) The names of the institution's operating officers, and
 - (3) The names of the institution's trustees or directors, as the case may be;
 - C. If applicable, a statement, on forms supplied by the Division of Banks, on the condition of the trust department of an institution;
 - D. If applicable, a statement, on forms supplied by the Division of Banks, on the activities of the institution's subsidiaries;
 - E. A report, on forms supplied by the Division of Banks, on extensions of credit to all officers, trustees, corporators, or directors or certain individuals, by savings banks, under G.L. c. 168, §20; co-operative banks under G.L. c. 170, § 19; or trust companies under G.L. c. 172, § 18; and,
 - F. Any such other information or data the Commissioner of Banks may require from time to time.
- II. All reports under section I shall be signed and certified under oath by the institution's president, treasurer and a majority of its Audit or Finance Committee or as otherwise directed.

PENALTIES

Failure or neglect to make or prepare any reports required by this Directive may result in the imposition of penalties under G.L. c. 167, § 7 or provisions of law.

COMMONWEALTH OF MASSACHUSETTS

DIVISION OF BANKS

ADMINISTRATIVE BULLETIN

Ref. No. 29-2

Issued: December 11, 1989

All Banks and Credit Unions

G.L. c. 167, § 7

G.L. c. 167, § 13

G.L. c. 167, § 14

Filing of Annual Call Reports By
State-Chartered Financial Institutions
On Their Activities Under the Community Reinvestment Act

AUTHORITY This directive is issued by the Commissioner of Banks under the authority of Massachusetts G.L. c. 167, § 7; G.L. c. 167, § 13; and, G.L. c. 167, § 14.

**APPLICABILITY
AND SCOPE**

The terms and conditions of this Administrative Bulletin further govern the making of "call reports", the statements, returns, and reports to the Commissioner of Banks under the above cited statutory authorities, by state-chartered savings banks, co-operative banks, trust companies and credit unions.

The information and data contained in the Community Reinvestment Act (CRA) call reports will be used, among other things, to prepare the Commissioner of Banks' Annual Report to the General Court, as mandated by G.L. c. 167, § 13. This information will be utilized by the Division of Banks to monitor compliance with the Community Reinvestment Act on both an individual and industry-wide basis. The Commissioner's Annual Report and the individual institutions' reports will also be available to the public for general research and informational purposes.

This directive shall govern the filing of Annual CRA Call Reports for the period ending December 31, 1989 and all other subsequent years.

ANNUAL CRA
CALL REPORTS
REQUIREMENTS

I. On or before February 1, of each year, all state-chartered savings banks, co-operative banks, trust companies and credit unions shall submit two (2) copies of a report, on forms prescribed by the Division of Banks, containing specified information and materials on the institution's record of performance in ascertaining and meeting the credit needs of its local communities, including low and moderate income neighborhoods, during the preceding year ending December 31.

II. All reports required under section I shall be signed by the institution's president or chief executive officer or as otherwise directed.

PENALTIES

Failure or neglect to make or prepare any report required by this Administrative Bulletin may result in the imposition of penalties under Massachusetts G.L. c. 167, § 7 or other provisions of law.

COMMONWEALTH OF MASSACHUSETTS

DIVISION OF BANKS

ADMINISTRATIVE BULLETIN

Ref. No. 29-3

Issued: September 18, 1991

Credit Unions

G.L. c. 167, § 7

G.L. c. 167, § 13

G.L. c. 171, § 26

Directive Governing the Filing of
Annual and Semi-Annual Reports by
State-Chartered Credit Unions

AUTHORITY This directive is issued by the Commissioner of Banks under the authority of Massachusetts G.L. c. 167, § 7; G.L. c. 167, § 13; and G.L. c. 171, § 26.

**APPLICABILITY
AND SCOPE**

The terms and conditions of this Administrative Bulletin govern the making of the statements, returns, and reports to the Commissioner of Banks under the above cited statutory authorities, by state-chartered credit unions. This directive, however, does not govern similar reports filed by other state-chartered financial institutions. (See Administrative Bulletin 29-1).

The information and data contained in such reports are used, among other things, to prepare the Commissioner of Banks' Annual Report to the General court as mandated by G.L. c. 167, § 13. This information is also utilized by the Division of Banks and the public for general research and statistical purposes.

The purpose of this Directive is to increase the frequency by which credit unions submit financial information to the Commissioner. Another goal is to eliminate duplicate filings resulting from the ongoing process by which all credit unions' shares will be insured by a federal share insurance agency.

This directive shall govern the filing of Annual and Semi-Annual Reports for the period ending December 31, 1991 and all other subsequent years.

**ANNUAL AND SEMI-ANNUAL
REPORT REQUIREMENTS**

- I. Two (2) sets of the following information, statements and reports shall be submitted to the Commissioner of Banks no later than 30 days after June 30 and December 31 of each year.

- A.
 - (1) A certified copy of the Consolidated Reports of Income and Condition filed by the credit union with its federal share insurer (NCUA Form 5300); or,
 - (2) A completed NCUA Form 5300 supplied by the Commissioner of Banks, if the credit union's shares are not federally insured.
 - B. A report, on forms supplied by the Division of Banks, containing the following:
 - (1) The locations of the institution's main office and branches,
 - (2) The names of the institution's operating officers, and
 - (3) The names of the institution's directors.
 - C. A report, on forms supplied by the Division of Banks, on extensions of credit to all officers, or directors or certain individuals, by credit unions as required by General Laws, Chapter 171, section 26.
 - D. Any such other information or data the Commissioner of Banks may require from time to time.
- II. All reports under section I shall be signed and certified under oath by the credit union's president, treasurer and a majority of its Auditing Committee.

PENALTIES

Failure or neglect to make or prepare any report required by this Directive may result in the imposition of penalties under General Laws Chapter 167, section 7 or other provisions of law.

COMMONWEALTH OF MASSACHUSETTS

DIVISION OF BANKS

ADMINISTRATIVE BULLETIN

Ref. No. 30-1

Issued: June 1, 1989

All State and
Federally-Chartered
Banks and Credit Unions

Fair Advertising Guidelines For Short-Term
Certificates Of Deposit and Money Market Accounts

0.0 INTRODUCTION

0.1 These voluntary guidelines are the final product of the Bank Advertising Working Group formed by the Executive Office of Consumer Affairs and Business Regulation in February, 1989. The Working Group was composed of representatives from the banking industry and regulatory officials. Participants included the Executive Office of Consumer Affairs and Business Regulation, the Division of Banks, the Massachusetts Bankers Association, the Massachusetts League of Community Banks, the Credit Union League of Massachusetts, the Massachusetts Credit Union Association and the New England League of Savings Banks.

1.0 PURPOSE

1.1 The purpose of these guidelines is to suggest an approach to advertising money market accounts and certificates of deposit of less than one year in length so that the consumer is fully informed about the actual rate of interest an account pays, the compounding method used if any, and the assumptions underlying any effective annual yield which may be quoted. Use of an effective annual yield in conjunction with a simple interest account, or any other account under a year in length, has a tendency to mislead consumers unless full disclosure is made. The effect of these guidelines will be to deemphasize the effective annual yield in relation to the annual rate in advertising.

2.0 GENERAL REQUIREMENTS

2.1 These guidelines apply to all advertising in whatever form and in whatever medium for certificates of deposit or similar instruments of less than one year in length and for money market accounts, whether such accounts pay simple or compound interest.

2.2 In advertising all such accounts, use of an effective annual yield is optional, unless required by law in a particular case. In all cases, rates and yields in advertisements should be labeled with the terms, "annual rate" and "effective annual yield," respectively.

3.0 PRINT ADVERTISING

3.1 If an effective annual yield is used, it may be no larger in type size than twice the size of the typeface used to disclose the assumptions upon which the yield is based. For purposes of determining whether one type face is twice the size of another, comparison must be made between the height of a typical upper case letter in the disclosure and the height of the dominant number in the yield.

3.2 If an effective annual yield is used, it must be displayed in smaller type than the annual rate, so that attention will be drawn to the rate and not to the yield.

3.3 If an effective annual yield is used, all material assumptions underlying it, including but not limited to those listed in 4.2, must be fully disclosed. The yield must be either integrated into the body of the disclosure, or the disclosure must be placed next to each appearance of the yield. Footnote-type disclosures with the yield appearing elsewhere in the advertisement are not acceptable.

3.4 If an account pays only simple interest during its term, the phrase "simple interest" should be placed clearly and conspicuously next to the annual rate.

3.5 The guidelines apply to each advertised account individually, including to each account in a multiple account advertisement. In the case of multiple account ads for 2 or more accounts covered by these guidelines, and where the disclosure for each account is identical, then the assumptions need only be disclosed next to one of the affected accounts. Where the disclosure is not printed adjacent to a yield, appropriate reference to the assumptions should be made by asterisk or otherwise from each yield.

4.0 DISCLOSURE OF ASSUMPTIONS

4.1 The disclosure of the underlying assumptions upon which the effective annual yield is based should contain all the material factors used in determining that yield.

4.2 Depending on the particular account, such factors should include:

- a. Whether the account pays simple or compound interest during the term;
- b. The frequency of any compounding during the term;
- c. That the yield assumes rolling over the account;
- d. The fact that the advertised interest rate is not guaranteed to be available at the time of each rollover;
- e. That the yield assumes that the funds remain on deposit for one year;
- f. How often the rate is adjusted as in the case of a money market account, and that the same rate is not guaranteed to continue to be available;
- g. Any other restrictions or assumptions pertaining to the yield, e.g., a savings account must be maintained in order to receive compound interest on the CD.

4.3 The disclosure should be a single disclosure of uniform typeface, except insofar as a variance is allowed for the yield under guideline 3.1.

5.0 TELEVISION AND RADIO ADVERTISING

5.1 All the above rules apply to television advertising, and to radio advertising with respect to disclosure content, in addition to the guidelines below.

5.2 If an effective annual yield is shown on the screen, it must be juxtaposed next to the assumptions, and the assumptions must be orally stated.

5.3 The typeface for any required disclosure must be clearly legible, and held on the screen long enough to be read.

5.4 If the yield is only stated orally, the assumptions must also be stated orally at the time of stating the yield. Disclosure on the screen in addition to the oral statement is optional.

6.0 IN-BANK RATEBOARDS

6.1 If an account covered by these guidelines pays simple and not compound interest during its term, and is displayed on an in-bank rateboard, the phrase "simple interest" must be prominently displayed where the account is listed on the board.

6.2 If an effective annual yield is displayed on an in-bank rateboard for accounts covered by these guidelines:

- a. The yield number may be no larger than the annual rate; and either:
- b. The material assumptions underlying the yield must be stated in easily readable type-size on the rateboard and be placed either next to the yield, or in a clearly referenced footnote to the yield; or
- c. Language such as "assumptions apply, ask for details" in easily readable type-size must be placed either next to the yield or in a clearly referenced footnote to the yield.

COMMONWEALTH OF MASSACHUSETTS

DIVISION OF BANKS

ADMINISTRATIVE BULLETIN

Ref. No. 31-1

All Credit Unions

Issued: September 18, 1991

G.L. c. 167, § 2

G.L. c. 167, § 6

G.L. c. 171, § 17

G.L. c. 171, § 66

Directive Governing the Use of
State Certified or Licensed Appraisers
by Non-Federally Insured Credit Unions

AUTHORITY This Directive is promulgated by the Commissioner of Banks under the authority of G.L. c. 167, § 2; G.L. c. 167, § 6; G.L. c. 171, § 17, and G.L. c. 171, § 66.

**APPLICABILITY
AND SCOPE** This Administrative Bulletin requires non-federally insured credit unions to use appraisers who are certified and licensed under the provisions of G.L. c. 112, § 173-195 in certain real estate transactions. The mandatory use of certified or licensed appraisers are in addition to the credit committee certification requirements of G.L. c. 171, § 17 and § 66.

Accurate written appraisals are critical to the safe and sound underwriting of real estate loans. The use of independent professional appraisers who adhere to uniform appraisal standards significantly reduces the risk of loss to credit unions in real estate related transactions. Moreover, the use of such appraisers is mandatory for all state-chartered, federally-chartered banks and credit unions under the provisions of Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, ("FIRREA") (Pub. L. No. 101 section 1101-22).

Specific appraisal requirements govern state chartered banks whose deposits are insured by the Federal Deposit Insurance Corporation ("FDIC") and credit unions whose shares are insured by the National Credit Union Administration's ("NCUA") National Credit Union Share Insurance Fund ("NCUSIF"). They are found in 12 CFR Part 323 and 12 CFR Part 722, respectively. Safety and soundness considerations and the need for uniform appraisal requirements for all state-chartered financial institutions dictate that similar appraisal requirements apply to credit unions whose shares are insured by the Massachusetts Credit Union Share Insurance Corporation under Chapter 294 of the Acts of 1961.

APPRAISAL REQUIREMENTS

Effective December 31, 1991, all non-federally insured state-chartered credit unions shall be subject to the real estate appraisal standards and requirements of 12 CFR Part 722, as may be amended from time to time, which is incorporated by reference herein. For the purposes of this Administrative Bulletin the term "National Credit Union Administration" as used in 12 CFR Part 722 shall mean the Commissioner of Banks and the term "Federally related transaction" shall also include any real estate transaction entered into after December 31, 1991 that (1) any non-federally insured credit union engages in or contracts for; and (2) requires the services of an appraiser.

PENALTY

Any credit union that fails to comply with the terms and conditions of this Administrative Bulletin will be deemed to be engaging in an unsafe and unsound practice which may result in the imposition of such sanctions or remedial measures under G.L. c. 167, G.L. c 171, or Chapter 294 of the Acts of 1961, as the Commissioner may deem appropriate.

COMMONWEALTH OF MASSACHUSETTS

DIVISION OF BANKS

ADMINISTRATIVE BULLETIN

Ref. No. 32-1

All Credit Unions

Issued: September 18, 1991

G.L. c. 167, § 2

Minimum Regulatory Capital Standards
for Credit Unions

AUTHORITY This Directive is issued by the Commissioner of Banks pursuant to the authority of G.L. c. 167, § 2.

**APPLICABILITY
AND SCOPE** This Administrative Bulletin establishes minimum capital requirements for state-chartered credit unions. Capital adequacy is an essential component in determining the safety and soundness of a credit union. The following minimum capital standards shall become effective January 1, 1993.

DEFINITIONS The following words shall, unless the context otherwise requires, have the following meanings:-

"Capital" - consists of a credit union's surplus and undivided earnings, as well as the "regular reserve" mandated by 12 U.S.C. section 1762 and 12 CFR section 702.2, if the credit union's shares are federally-insured. Capital does not include: (a) Loan loss reserves; (b) investment reserves; or (c) assets classified as loss during an examination conducted under G.L. c. 167, § 2, to the extent they are not reserved for in clauses (a) and (b).

"Commissioner" - The Commissioner of Banks

"Credit Union" - A credit union as defined by G.L. c. 171, § 1 and subject to supervision and examination by the Commissioner.

REQUIREMENTS

A. Minimum Capital Standards

1. All credit unions shall maintain adequate capital levels as specified in this Administrative Bulletin.
2. The minimum capital requirement for a fundamentally sound, well run credit union shall consist of a capital to total assets ratio of three percent (3%).

3. A higher minimum capital level may be imposed by the Commissioner for those credit unions whose financial history, or condition, managerial resources and/or the future earnings prospects are not adequate, or where the credit union has sizable funding risks, excessive interest rate risk exposure, or a significant volume of assets classified substandard, doubtful or loss.

B. Inadequate Capital Levels

1. A credit union operating with less than the minimum capital requirement, required by section A, does not have adequate capital and therefore has inadequate financial resources.
2. Any credit union operating with an inadequate capital structure, and therefore inadequate financial resources, may not receive approval for any application requiring the Commissioner's approval.
3. A credit union having less than the minimum capital requirement shall, within 60 days of the date as of which it fails to comply with the capital requirement, submit to the Commissioner for review and approval a reasonable plan describing the means and timing by which the credit union shall achieve its minimum capital requirement.
4. The Commissioner in his discretion, may approve an application if he finds that the applicant has committed to and is in compliance with a reasonable plan to meet its minimum leverage capital requirements within a reasonable period of time.

C. Unsafe and Unsound Condition

1. Any credit union with a capital ratio to total assets that is less than two percent (2%) is deemed to be operating in an unsafe and unsound condition which may result in the imposition of remedial measures under section D.
2. A credit union with a ratio of capital to total assets of less than two percent (2%) which has entered into and is in compliance with a written agreement with the Commissioner to increase its capital ratio to such level as the Commissioner deems appropriate and to take such other action as may be necessary for the credit union to be operated in a safe and sound manner, will not be subject to remedial measures under section D on account of its capital ratios.

D. Remedial Measures

The Commissioner, in his discretion may exercise his authority under G.L. c. 167, § 3; G.L. c. 167, § 22, G.L. c. 167, § 26A and/or Chapter 294 of the Acts of 1961, as amended, to correct or resolve any credit union's failure to comply with the provisions of this Administrative Bulletin.

COMMONWEALTH OF MASSACHUSETTS

DIVISION OF BANKS

ADMINISTRATIVE BULLETIN

Ref. No. 33-1

All Credit Unions

G.L. c. 167, § 6

Issued: September 18, 1991

G.L. c. 171, § 66

Policy Statement on Residential Mortgage
Loan Underwriting by Credit Unions

AUTHORITY
AND SCOPE

This policy statement is issued by the Commissioner of Banks under the of G.L. c. 167, § 6 and G.L. c. 171, § 66. The purpose of this Directive is to ensure that credit unions making residential mortgage loans under G.L. c. 171, § 65 adhere to sound underwriting practices.

POLICY

All residential mortgage loans made under G.L. c. 171, § 65 must conform to comprehensive written loan policies previously approved and updated annually by the credit union's Board of Directors. Such policies should, at a minimum, meet the specific statutory requirements of G.L. c. 171, §§ 65 and 66.

A credit union's written policy shall also contain the following:

- a. Detailed underwriting guidelines consistent with the requirements of the Federal National Mortgage Association ("Fannie Mae"), the Federal Home Loan Mortgage Corporation ("Freddie Mac"), or another established secondary market participant;
- b. Detailed loan processing guidelines consistent with the requirements of Fannie Mae, Freddie Mac or another established secondary market participant;
- c. Specific types of real estate loans that will be offered;
- d. The percentage of credit union assets that will be invested in real estate loans by type. Such allocation shall be consistent with prudent asset/liability management principles and policies;

- e. Procedures for offering residential mortgage loans for sale in the secondary mortgage market;
- f. Minimum qualifications and experiences of personnel involved in granting and administering real estate loans, and business loans in particular;
- g. Procedures for monitoring quality control standards addressing the credit, collateral and interest rate risk within the real estate loan portfolio;
- h. Mortgage loan pricing methods and policies that are consistent with current market conditions and the credit union's ability to offer competitive products; and,
- i. Procedures for the prompt resolution of Other Real Estate Owned or Foreclosed Real Estate.

ENFORCEMENT Examiners will carefully review credit union loan policies for completeness and compliance with this Administrative Bulletin during the annual examinations conducted under G.L. c. 167, § 2. Credit unions having deficient loan policies will be required to revise their loan policies to correct examiner criticisms.

COMMONWEALTH OF MASSACHUSETTS

DIVISION OF BANKS

ADMINISTRATIVE BULLETIN

Ref. No. 34-1

Issued: October 29, 1992

All Mutual Savings Banks
and Co-operative Banks
G.L. c. 168, § 34C
G.L. c. 170, § 26C

Policy Statement on Determining the
Equity Value of a Bank in a
Supervisory Stock Conversion
Pursuant to Subpart B of 209 CMR 33.00

**AUTHORITY
AND SCOPE**

This policy statement is issued under the authority of G.L. c. 168, § 34C and G.L. c. 170, § 26C. The purpose of this directive is to provide a standard for determining when a mutual savings bank or co-operative bank is deemed to meet certain mandatory regulatory eligibility requirements for a supervisory stock conversion under Subpart B of 209 CMR 33.00. The specific eligibility requirement addressed by this directive is 209 CMR 33.16(c).

POLICY

This particular regulation requires a determination by the Commissioner that "upon liquidation of the bank . . . there would be no equity value realizable by the [bank's] mutual account holders." The meaning of this phrase is being clarified in order to permit undercapitalized state-chartered mutual institutions to utilize the supervisory stock conversion provisions of 209 CMR 33.00 as a means of raising additional capital. The Division of Banks notes that its previously employed "insolvency test" (liabilities exceed assets) regarding the liquidation value of an applicant bank could discourage private investors from injecting capital into such banks at that point in time. Accordingly, the Division of Banks hereby adopts the following standard for determining compliance with 209 CMR 33.16(c).

STANDARD

For the purposes of 209 CMR 33.16(c), mutual account holders will be deemed to have no equity value realizable upon liquidation of the bank if the applicant bank: (i) is "significantly undercapitalized" or "critically undercapitalized," as those terms are defined by 12 CFR §325.103, and (ii) demonstrates that a standard conversion that would raise sufficient capital to meet its current minimum capital requirements is not feasible.

The burden is upon the applicant bank to demonstrate that the preceding standard is met as well as all other requirements of Subpart B of 209 CMR 33.00.

**EFFECTIVE
DATE**

This policy statement is effective immediately.

THE DIVISION OF BANKS

OPINIONS

COMMONWEALTH OF MASSACHUSETTS

DIVISION OF BANKS

ADMINISTRATIVE BULLETIN

Ref. No. 83-3

Credit Unions

Issued: December 7, 1983

G.L. c. 171, § 67

Opinion Relative To
Prohibition On Deposits in Federal Savings Banks
By Credit Unions

The Division of Banks has recently determined that the General Laws make no provision for a credit union to make deposits in a federally chartered savings bank.

In view of this ruling all credit unions having regular deposit accounts and/or money market accounts in such an institution must close them out as soon as is practicable.

In order that no credit union suffer a penalty for early withdrawal of a term deposit account lawfully entered into in such an institution, this Division will not require such accounts to be closed out prior to maturity. The Division will, however, require that no further term accounts be entered into and that all present accounts be closed out at maturity.

COMMONWEALTH OF MASSACHUSETTS

DIVISION OF BANKS

ADMINISTRATIVE BULLETIN

Ref. No. 83-4

(Restated 1992)

All Banks

G.L. c. 167E, § 2

G.L. c. 167E, § 14

G.L. c. 167F, § 2

G.L. c. 167F, § 3

Opinion Relative To
the Interpretation of the Massachusetts
Statutes Governing Loans and Investments
Made By State-Chartered Banks

The industry has requested that the Division of Banks submit our interpretations as they relate to the recodification of the following specific banking statutes. In that regard the Division offers the following clarifications:

1. Banks may make first mortgage loans both under Chapter 167E, section 2, subsection A and subsection B. It is the position of the Division that the categories under both sections are independent of each other and that a bank may make a loan so long as it qualifies under any one of the numbered paragraphs contained in these subsections.
2. It is our opinion that under Chapter 167F, section 2, paragraph 1 savings banks may borrow on their behalf free from the limitations and notification requirements that were previously imposed by former Chapter 168, section 66. During the course of an examination, the role of the examiner will continue to be a review of the purpose and economic benefits of any outstanding and previously discharged borrowings for the period under review.
3. Banks may invest in stocks under a number of paragraphs of Chapter 167F, sections 2 and 3. It is the position of the Division that these paragraphs are independent of each other and that a bank may make an investment as long as it qualifies under any one of the paragraphs. For example, if a bank purchases shares of a U.S. company whose stock is listed on a national securities exchange, the bank can decide whether it wishes to have the investment categorized as a section 3, paragraph 4 investment or as a section 3, paragraph 5 investment.

4. In determining "obligations of one borrower" as referred to in Chapter 167E, section 14, subsection B, it is the position of the Division that equity investments are not to be considered as "obligations" for statutory purposes. During the examination process, the compilation of "Concentrations" will include equity investments along with advances of credit. In that regard, management may be subjected to criticism relative to prudent diversification practices.

Although Section 14, subsection D specifically exempts real estate loans from the limits on debt obligations, the posture of the Division will be to consider the amount of total real estate indebtedness of any individual or related entities, particularly those supported by income producing and/or commercial property, consistent with lending criteria to safety and soundness levels.

5. It is the position of the Division that Chapter 167F, section 2, paragraph 29 and Chapter 167F, section 9 do not limit the dollar amount of donations and memberships as previously imposed by former Chapter 168, section 68, paragraph 4.

COMMONWEALTH OF MASSACHUSETTS

DIVISION OF BANKS

ADMINISTRATIVE BULLETIN

Ref. No. 84-1

Credit Union
Massachusetts General Laws
c. 171, § 15

(Restated 1992)

Opinion Relative To Expenses and
Compensation for Directors of Credit Unions

The Division has been requested to review its posture regarding compensation being paid to credit union directors who are also elected officers, and reimbursement of out-of-pocket expenses being paid to all credit union directors. Subsequently, four proposals for consideration were submitted. The Division has reviewed those proposals and will approve them conditionally as follows:

1. A director of a credit union may not be paid by the credit union for serving as a director.

The Division is in complete agreement with this proposal.

2. Officers of a credit union as named in General Laws, c. 171, § 15 and whose duties are identified in the by-laws of the credit union, may be paid a reasonable amount. All other officers elected as authorized by c. 171 shall comply with each of the following conditions before a reasonable salary may be paid:
 - a. Each director/officer's duties, working hours, salaries, and other fringe benefits must be clearly delineated in the board of directors' minutes and be available for examiner review.
 - b. All salaries must be paid through the salary expense account which is used to pay all other staff salaries.
 - c. Federal and State income taxes must be withheld when required, as well as F.I.C.A. contributions.
 - d. I.R.S. form W-2 must be furnished to each director/officer and copies furnished to the Internal Revenue Service and Massachusetts Department of Revenue in the same manner and at the same time as those for all other staff members are.
3. A director of a credit union may be reimbursed a reasonable amount of out-of-pocket expenses incurred in the performance of director responsibilities or as a member of any committee. Such expenses must be itemized in writing and approved by the board of directors.

The Division agrees with this proposal under the following conditions:

- a. Only out-of-pocket expenses incurred in the performance of director responsibilities or as a member of any committee may be reimbursed. For each such reimbursement a completed, signed and dated voucher must be submitted, which must be approved by the board of directors.
 - b. Reimbursement of director expenses of a preset amount of money either voted at an annual meeting or a directors' meeting held subsequently will not be allowed under any circumstances.
4. The directors of a credit union may engage a member of the board to perform services for the credit union which are not a directors' responsibility and pay a reasonable amount for such services.

The Division's understanding of this proposal is that the board of directors may want to engage a director, who may or may not be an elected officer, for his expertise in a particular field. Such engagement may be on a full-time basis or on an individual basis as conditions warrant.

The Division agrees to this proposal.

In conclusion, the Division's position is as follows: In our opinion, the statute clearly states that a director of a credit union cannot be paid for his or her services as a director. Any attempt on the part of a credit union to circumvent that statute by electing all, or substantially all, of the board to officer positions without meaningful responsibilities will result in regulatory action, including the payback to the credit union of the salaries previously disbursed.

If it is the intent of credit unions to pay directors for their attendance at board meetings, obviously that requires legislation and is beyond the authority of this Division.

COMMONWEALTH OF MASSACHUSETTS

DIVISION OF BANKS

ADMINISTRATIVE BULLETIN

Ref. No. 84-3

(Restated 1992)

Banks, Credit Unions
and Mortgagees
G.L. c. 167E
G.L. c. 183

Opinion Relative To
The Legislature's Intent In
Including the Phrase "Occupied or To Be Occupied
in Whole or in Part By The Mortgagor"

An Association has asked this Division for its opinion relative to the Legislature's intent in including the phrase "occupied or to be occupied in whole or in part by the mortgagor" in several statutes applicable to mortgage loans.

The General Court of Massachusetts rarely provides an express statement as to the particular purpose of an act beyond the four corners of that statute. In light of that fact, the Division of Banks has a long history of attributing to the Legislature an intelligent and intelligible policy and of fitting new statutes into the existing framework in an effort to make a coherent whole. Consistent with that tradition, the Division believes that there is only one question raised by your letter, that being the Legislature's intent in passing the Acts in which this language is included.

In this situation the Legislature's use of the identical phrase in both the statutes authorizing various classes of mortgage loans, now codified in Chapter 167E, and in the sections of Chapter 183 which set out certain protections and requirements relative to mortgage loans evidences a similar intent for the application of those provisions. While there is strength in the contention that inclusion of that language in those authorizing statutes has only a physical dimension, it is clearly outweighed by the dominant purpose of those statutes and the applicable sections of Chapter 183 which is to benefit a borrower in a non-commercial transaction. For the Legislature this phrase has become an alternative form of defining a consumer loan. The consumer orientation of these statutes is acknowledged in your letter. An interpretation by this Division not based in any traditional understanding of legislative policy or in any rational purpose would be unwarranted regulatory action.

Therefore, it is the interpretation of this Division that the phrase "occupied or to be occupied in whole or in part by the mortgagor" has a physical dimension and a time dimension. In those cases in which the latter dimension is at issue the statutes containing that language shall apply to any transaction in which the criteria considered in granting the loan was that reviewed for a non-commercial loan.

COMMONWEALTH OF MASSACHUSETTS

DIVISION OF BANKS

ADMINISTRATIVE BULLETIN

Ref. No. 84-4

Banks and Credit Unions

Issued: June 26, 1984

G.L. c. 167B, § 3

Opinion Relative To
Authority to Capitalize an EFT Organization

This Division has been asked for its opinion relative to the authority for a financial institution to participate in a network for a shared electronic fund transfer system if such participation would require some type of investment or loan to capitalize the network.

As with any question relative to the construction of a statute the inquiry must begin with the language of the act itself. The electronic banking law, Chapter 167B of the General Laws, was established by chapter 530 of the Acts of 1981. Other than two minor technical amendments all authority for and provisions relative to electronic banking were set out in said Chapter 167B. Consistent with that statutory framework, authority to invest in electronic fund transfer systems should be determined from those provisions.

Section 5 of that statute infers authority to invest in an organization which assists or provides services to a financial institution in order to make available electronic fund transfers. That section provides that "No financial institution shall invest in or contract for the services of any organization unless such organization has been approved in writing by the commissioner and the financial institution has obtained a copy of such approval."

Furthermore section 3 states "The commissioner shall determine the amount which a financial institution may invest in the purchase, establishment, installation, operation, lease, use or sharing of electronic branches....In making such determination, the commissioner shall consider the amount already invested by such financial institution for the transaction of its business and the current condition of such financial institution."

This Division concludes that the authority set out in section 3 viewed in conjunction with the statutory framework of this Act, includes the power to invest in an organization established to provide any or all of the investment options granted in that provision to a financial institution, a defined term which for the applicable provision refers to all state-chartered institutions.

The conclusion is strengthened by a further provision of section 3 which would require the Commissioner to include a reasonable return on capital expenditures incurred in connection with the development, installation and operation of such a transfer system in a situation in which sharing was mandated. Clearly, such a capital expenditure would be authorized for permissive involvement with such a system when required by statute for a mandated entry.

Therefore, it is the opinion of this Division that a state-chartered institution is authorized to participate in the capitalization of an organization which is assisting that institution in making electronic fund transfers provided that such institution complies with the applicable provisions of said Chapter 167B. Those provisions include prior approval of such an investment on an individual basis.

COMMONWEALTH OF MASSACHUSETTS

DIVISION OF BANKS

ADMINISTRATIVE BULLETIN

Ref. No. 84-5

Stock Banks

Issued: July 26, 1984

G.L. c. 172, § 13

Opinion Relative To
Qualifying Shares For Directors
Of State-Chartered Stock Institutions

The current trust company statute establishing qualifications for a director provides, in part, that "Each director shall own, in his own right and free of any lien or encumbrance, common stock, either of such corporation or of a company owning seventy-five percent of the stock of such corporation, having a par value, or a fair market value on the date the person becomes a director, of not less than one thousand dollars."

This provision of trust company law is now applicable to stock savings banks and stock co-operative banks pursuant to the statute governing the conversion of such banks from mutual to stock corporations. The reason generally given for this requirement is that if the director has an ownership interest in the corporation, as evidenced by such shares of stock, then that director is more reasonably expected to have an on-going interest in the affairs of the corporation.

The Division of Banks has been requested to give its opinion as to whether the statutory test of owning stock "in his own right" is met by a director when title to the stock is held in joint name, in trust or in nominee name.

In Joint Name - In a joint account the real interest of each party is the value which each party is entitled to receive on dissolution of the account. That interest is generally determined by the amount of a party's contribution. Accordingly, if a director's contribution to ownership of such stock in joint name was equal to the amount necessary to own common stock having a par value, or a fair market value on the date the party became a director, of not less than one thousand dollars, then such ownership, even though in joint name, will qualify as "in his own right" for the purpose of this statute.

In Trust - Shares deposited by a director in an inter vivos trust of which the director is a trustee would qualify as "owned in his own right" provided that the director retained an absolute power of revocation over the trust. Unless the power of revocation is expressly reserved the inter vivos trust would be irrevocable. An affidavit to that effect should satisfy, however, if doubt exists an examination of the trust instrument would be in order.

In Nominee Name - If the number of shares required for qualification by this section are purchased by a director and subsequently put in nominee name, such action will qualify as ownership by the director "in his own right". A director holding shares in such manner should realize that such ownership is not indicated on the corporate records and therefore may require verification.

Although the statute further requires that a director take an oath that the required shares are owned "in his own right" and that a record of that oath be made part of the records of the corporation, a director may be asked to submit an affidavit as to compliance with this statute for review in conjunction with an examination.

COMMONWEALTH OF MASSACHUSETTS

DIVISION OF BANKS

ADMINISTRATIVE BULLETIN

Ref. No. 84-8

All Lenders

Issued: August 31, 1984

G.L. c. 255, §13L

Opinion Relative To The Refunding
of Points Upon Prepayment in Non-Mortgage
Consumer Loan Transactions

This Division has been asked for its opinion relative to the following specific matters.

1. Is the use of "points" (prepaid finance charge) in addition to an interest rate per annum an acceptable method of financing loans under Massachusetts law?

Section 63 of Chapter 183 of the Massachusetts General Laws prohibits the charging of points in most mortgage transactions involving owner-occupied residential property for four units or less except to the extent such a charge constitutes reimbursement for reasonable originating or underwriting expenses, as determined by the commissioner, (see Administrative Bulletin 13-5) and reimbursement for any commitment or other fees paid or to be paid for the intended purpose of selling loans in the secondary mortgage market.

No such statutory prohibition exists for consumer credit transactions other than mortgages. Accordingly, points may be charged in such a transaction, however, such a charge must be included in the Annual Percentage Rate (APR) and may not elevate the APR above any maximum lawful rate.

2. Assuming that "points" are acceptable must a portion of those points be refunded in the event of prepayment of a loan?

Section 13L of Chapter 255 of the Massachusetts General Laws, governing the prepayment of certain loans for personal, family or household purposes, requires that the borrower, upon prepayment, receive a refund of the precomputed charges based on either the sum of the digits method or the actuarial method depending on the length of the original contract. The issue of refunding a portion of any point assessed will be determined by whether a point is a "precomputed charge". Unlike other statutes which require the refund of a "finance charge" and provide a definition of such a charge neither this section of law nor other related statutes define the term "precomputed charge". However, for the purposes of this statute the Division of Banks has consistently interpreted that term to include any amount that is known in advance. The assessment of a point is an amount known in advance and thus is a precomputed charge. As such, it is subject to a refund upon prepayment of the transaction.

COMMONWEALTH OF MASSACHUSETTS

DIVISION OF BANKS

ADMINISTRATIVE BULLETIN.

Ref. No. 84-9

Banks, Federally-Chartered
Banks, And Persons, As Defined
G.L. c. 167D, § 34

Issued: September 19, 1984

Opinion Relative To
Maintaining The Telephone
Service Required By
Chapter 222 of the Acts of 1984

This Division has been asked for its opinion on the following matters relative to Chapter 222 of the Acts of 1984.

1. Classes of Institutions and Businesses Subject to the Act.

The question has been raised as to the scope of Chapter 222, and how it would be applied to non-banking institutions.

The statute applies to "every bank", federally-chartered bank or person...". "Bank" is defined in Section 1, Chapter 167D of the General Laws as "a savings bank, co-operative bank or trust company incorporated as such in the commonwealth."

"Federally-chartered bank" is defined in that same section as "a national bank association, a federal savings and loan association, a federal savings bank or a federal credit union authorized to do business in the commonwealth."

"Person" is defined in Section 7 of Chapter 4 of the General Laws as including "corporations, societies, associations and partnerships."

It is the opinion of this Division that the scope of the statute is all inclusive and applies to all those individuals-entities, without exception, who advertise to the public relative to any deposit or credit account or the sale of any security.

2. Types of Telephone Service Required.

The question has been raised as to whether or not a bank is required to establish a separate telephone line to comply with the statute.

In our opinion a bank or person need not establish a separate line in order to comply with the statute. A bank or person would be able to provide a general telephone line or service and refer inquiries on rates, fees and related items to the appropriate customer service representatives. Some banks or persons, however, may establish a separate line or alternatively may even use a recorded message which could provide this general information.

3. Operating Hours of Service.

The question has been raised whether the service must be maintained only during normal business hours when the main office is opened. It is argued that to require that the service be available evenings or Saturday mornings when a bank is open primarily for check cashing and deposit purposes is an unfair burden to place upon a bank.

In our opinion the statute is clear and unequivocal. It requires that the telephone service be "available during any hour that any of its offices are opened for business." That requirement is in effect even if the office is open only for a limited time or purpose. The ready availability of a recorded message service would eliminate any burden associated with complying with the statute during times when the "main office" may not be open for full service.

4. Accession of Personal Accounts and Applying for New Accounts.

The question has arising whether the statute limits the authority of banks and other businesses to provide other information, such as personal account information, or information relative to new accounts, to a customer requesting it by phone.

The provisions of Chapter 222 do not in any way limit a business's general ability to provide whatever information by telephone it chooses to make available. The Act, however, specifically prohibits the telephone service maintained to comply with this statute from being used to access personal account information or to apply for or obtain a new account or extension of credit or to purchase any security. The prohibition on new accounts, sales or obtaining credit were contained in the original petition while the prohibition on accessing personal information was specifically added by the Legislature. Therefore, it is the opinion of this Office that inquiries of a nature prohibited by this statute must be transferred or referred to another service representative or to a separate line or extension.

5. Penalties, Enforcement.

As enacted, Chapter 222 does not presently spell out any penalty for non-compliance, nor does it provide for any procedures which could be used by the Commissioner in enforcement of the statute against non-banking related institutions. The question has thus been asked how enforcement will be handled and what penalties may be imposed.

As to those institutions which come within the direct jurisdiction of this Office the Commissioner will exercise those powers and impose those penalties granted him under the general banking statutes to enforce the General Laws of the Commonwealth. Any violations of Chapter 222 by institutions not subject to our jurisdiction will be referred to the Office of the Attorney General where appropriate.

COMMONWEALTH OF MASSACHUSETTS

DIVISION OF BANKS

ADMINISTRATIVE BULLETIN

Ref. No. 84-10

Mortgagees

Issued: December 3, 1984

G.L. c. 183, § 63

Opinion Relative To
Payment Of A Commission
To A Solicitor Hired
By The Mortgagee

The Division of Banks has been requested to give its opinion as to whether a commission paid to a field representative or a solicitor hired by the mortgagee for originating a mortgage can be assessed to the borrower over and above the permitted point charge.

The charging of points or fees in a residential mortgage transaction is governed by section 63 of Chapter 183 of the General Laws and, pursuant to the provisions of that statute, guidelines determined by this Division which are codified as Administrative Bulletin 13-5.

Section 63 specifically prohibits charges such as a loan fee, finder's fees, points, so called or similar fees in such a mortgage transaction except to the extent such fees constitute reimbursement for reasonable originating or underwriting expenses as determined by this Division.

It is the conclusion of this Division that such a payment to the mortgagee's representative or solicitor is, regardless of designation, included within the statutory prohibition against "finder's fees" or "similar fees". As a direct originating cost it is subject to the established maximum of one point for all such expenses in a residential mortgage transaction.

Accordingly, any such "commission" paid to a field representative, salesman, or solicitor of the mortgagee cannot be assessed as a separate charge to the mortgagor.

COMMONWEALTH OF MASSACHUSETTS

DIVISION OF BANKS

ADMINISTRATIVE BULLETIN

Ref. No. 85-1

Issued: June 27, 1985

Credit Unions

G.L. c. 171, § 10 and § 25

G.L. c. 140E

Opinion Relative To
The Par Value of Shares In Credit Unions

The Division of Banks has been asked for its opinion relative to various provisions of law involving a change in the par value of a share in a credit union which had remained at five dollars since that dollar amount had been set by statute in 1926. The first change to that provision in almost sixty years has raised certain novel questions which are directly impacted by the enactment of other statutes relating to shares and deposits over that time period. Reviewing new statutes in such situations the Division of Banks always attributes to the Legislature an intelligent and intelligible policy and analyses new laws in light of the existing statutory framework in an effort to make a coherent whole. The Division has reviewed the submitted questions and formed its opinions consistent with that tradition.

Chapter 56 of the Acts of 1985 is a one section act which amended only the sentence governing the dollar amount of a share in a credit union. A separate provision of existing law requires each member to hold one share. The holding of that share grants full membership rights to an individual including the ability to vote in the affairs of the credit union and to be eligible for consideration for a loan. The Division has been asked as to whether the lack of a grandfather clause in said Chapter 56 serves to negate the membership of an existing account holder with only one five dollar share or shares totalling less than twenty-five dollars. It is the opinion of this Division that the provisions of Chapter 56 are only prospective in nature and thus apply only to share accounts opened after August 19, 1985. That opinion is supported by a firm belief that the legislative intent was not to disenfranchise or deem ineligible for loans any existing credit union member.

A more difficult question raised by the increase from five dollars to twenty-five dollars in the par value of a share involves a section of law which Chapter 56 did not amend. The second paragraph of section 25 of chapter 171 of the General Laws contains the following language "... dividends may not be declared or paid on shares or deposits of less than three full shares or ten dollars." Historically, section 25 contained provisions relative solely to the payment of a dividend on shares.

That section continues to include the provision setting the maximum dividend which may be paid on shares while the limitation on the rate of interest on deposits is set out in section sixteen of Chapter 171. Although credit unions have always been able to receive shares or deposits the vast majority of accounts are share accounts.

The above cited language containing a reference to "shares and deposits" was added in 1965. The interjection of the word "deposits" coupled with the additional provision requiring three full shares or ten dollars has led many people to read that language as if the word 'respectively' were included. Based on such a reading dividends would be paid on a share account only if a member had three shares while a dividend would be paid on deposits if an account had at least ten dollars. That reading, in light of the passage of Chapter 56, would result in a member being required to have at least seventy-five dollars in a share account in order to receive a dividend. The Division has been asked whether its present reading of that language is consistent with that articulated above.

For several reasons, many of which are based on a historical review of this section, the Division does not concur in that reading of this statute. Primarily, such a reading would have in 1965 and would now subject the holder of a share account in a credit union to a higher minimum balance requirement by statute than required then or now from a depositor in a savings bank or a co-operative bank or, under the reading at issue, a member with a deposit account in a credit union. The statute does not clearly indicate a legislative intent to so discriminate against such shareholders. Such discrimination would only be exacerbated by the change contained in Chapter 56.

This Division will not impose through an opinion or an interpretive reading such a burden on a shareholder of a credit union. The petitioners who filed the legislation which became Chapter 56 or the Legislature itself should seek to resolve the ambiguous language in section 25 and particularly as that section is affected by an amendment to a separate section governing the par value of a share. This Division encourages such a clear determination of this issue. Until such a resolution occurs, it is the opinion of this Division that an equally fair reading of that language is that it requires the amount of three full shares or ten dollars for either share or deposit accounts such that whichever was the lesser amount would qualify the account for a dividend. Therefore, this Division would require under existing law and after the effective date of Chapter 56 a credit union to pay a dividend on any account with a value of ten dollars or more.

On July 1, 1985 Chapter 140E of the General Laws, the Truth-in-Savings Act, and the regulations of this Division promulgated thereunder will become effective. The Division has been asked how various provisions of those regulations should be treated in light of the increase in the par value of a share as set out in Chapter 56. The Division's opinions on the issues discussed above generally negate the Truth-in-Savings questions. However, to the extent that the opinion relative to the minimum amount necessary to receive a dividend results in a changed balance requirement in a credit union, the Division would not require that the thirty-day notice of change, required by the regulations, be sent until that issue is definitively addressed by the Legislature.

COMMONWEALTH OF MASSACHUSETTS

DIVISION OF BANKS

ADMINISTRATIVE BULLETIN

Ref. No. 85-4

Issued: October 2, 1985

Open-End Creditors

G.L. c. 140, § 114B

G.L. c. 140D, § 20

G.L. c. 183, § 63

Opinion Relative To
Balances and Points In
Open-End Credit Plans

Chapter 489 of the Acts of 1984 contained significant amendments to the applicable laws governing open-end credit plans in addition to establishing a Truth-in-Savings Law. The provisions of that Act affecting open-end credit had two separate and distinct thrusts and amended two different sections of law. The first change amended section 114B of Chapter 140 of the General Laws to establish a mechanism whereby the existing maximum interest rate of eighteen percent could be exceeded. The second change amended section 20 of Chapter 140D of the General Laws, the Truth-in-Lending Law, to eliminate the free period, so called, whenever a balance exists at the start of a new billing cycle. Questions have been raised to this Office as to the application and ramifications of the language contained in each amendment.

Section 20 of Chapter 140D deals with the computation of finance charges under certain open-end credit plans and states in pertinent part:

"If a finance charge is imposed under an open-end credit plan on balances resulting from the sale of goods or services at retail made in reliance on a credit card, the finance charge applicable to said balances for any cycle shall be computed on ...provided, however, that no finance charge may be computed on any new sale reflected for the first time in the account during the billing cycle if there was no balance outstanding in the account at the beginning of the billing cycle. . . ."

The Division has been requested to give its opinion as to whether the word "balance" which is underlined above refers solely to a balance resulting from the sale of goods or services at retail or does it refer to any balance regardless of how it arises under such an open-end plan.

Although the term "open-end credit" covers a myriad of products, section 20 applies only to those plans transacted by use of a credit card. The 1984 amendment to the free period was specifically drafted so that change would not apply to revolving credit agreements, primarily retail store credit cards, which are governed by Chapter 255D of the General Laws. Therefore, the recent amendment affects only those credit cards issued by banks. Unlike retail store cards, bank credit cards have a dual capability. Such a card provides the holder with the power not only to purchase goods or services but also to obtain cash advances. Thus, under an open-end credit plan evidenced by a bank card, an individual could generate a balance from purchases, cash advances or a combination thereof. In construing a statute it is the duty of this Office to ascertain and implement the intent of the Legislature. When the language of the enactment is clear and unambiguous this Division must look to the statute itself and interpret it according to the usual and natural meaning of its language. This Division believes that the language of section 20 states clearly and unambiguously that the free period applies only if there was "no balance outstanding" at the beginning of the billing cycle. The plain meaning of those words must be given their full effect. Accordingly, it is the opinion of this Office that if any balance exists, regardless how it arises, then the free period is eliminated on purchases first appearing in subsequent billing cycles.

The amendment to the interest provisions of the open-end credit law requires this Office to determine as of the first of March, June, September and December a quarterly index rate as calculated by doubling the average of the rates established and announced as the auction average on a discount basis of United States Treasury bills with maturities of ninety-one days at the auctions held during the three calendar months preceding the above computation dates. Under the provisions of the amendment, if the index rate computation exceeds 18% then open-end credit grantors may set their own rate above 18% for the three-month period beginning one month after the computation date. As indicated previously, the term open-end credit covers a number of products, including home equity loans secured by a lien placed on the property. The nature of that transaction has resulted in this Office being asked if such an open-end credit plan is subject to the statute, section 63 of Chapter 183, and guidelines of this Division, Administrative Bulletin 13-5, governing the charging of points or similar fees in certain residential mortgage transactions. The issue is raised due to an exclusionary provision in section 63 which provides that the statute is not applicable to ". . . loans subject to government imposed interest rate ceilings, as determined by the Commissioner."

In reviewing the provisions of the applicable statutes, the Division is persuaded by the fact that open-end credit plans, even after the recent amendment, remain subject to the statutory provisions of section 114B of Chapter 140 and the quarterly rate mechanism contained therein. Accordingly, this Office determines that open-end credit plans which are secured by mortgages on residential property of four or less units and occupied or to be occupied in whole or in part by the mortgagor are not subject to the provisions of section 63 of Chapter 183 or the guidelines of this Division issued pursuant to that statute.

COMMONWEALTH OF MASSACHUSETTS

DIVISION OF BANKS

ADMINISTRATIVE BULLETIN

Ref. No. 85-5

Issued: November 29, 1985

Credit Unions
G.L. c. 171, § 21C
§ 24, subdivisions A to G,
inclusive

Opinion Relative To
Sale and Purchase of Loans
By a State-Chartered Credit Union
To Another Such Credit Union

The Division has been asked for its opinion relative to the authority of a state-chartered credit union to purchase loans from another such credit union. Although the statute in question covers the sale, transfer or assignment of any and all of a credit union's loans, investments or other assets, the issue is framed regarding loans since loans are fundamental to the business of a credit union; market conditions are such that a transaction, if permitted, would be beneficial to appropriate credit unions on each end of the agreement; and there appears to be a conflict with related loan statutes all of which existed prior to the passage of the law governing the sale of assets.

It is not uncommon for issues to be raised by the statutory construction of Chapter 171 governing credit unions. The different statutes controlling each of the other types of state-chartered institutions have all been recodified at least twice in the last thirty-five years. Chapter 171, however, has had no such process to realign and coordinate its provisions in almost sixty years. Numerous, singular, enabling amendments enacted over such a large span of time are likely to and have resulted in gaps in statutory provisions.

In construing this chapter and other provisions of law, this Division has consistently stated its intent to interweave provisions to compose as far as feasible and reasonable a coherent whole faithful to the purposes of the Legislature. The issue at hand turns on this Division's view as to whether a certain provision is to be deemed merely a restrictive, procedural clause or a provision containing both enabling authority as well as procedural requirements. It is the conclusion of this Office that the latter reading is correct.

In 1980 the Legislature inserted into Chapter 171, section 21C by passage of Chapter 79 of the Acts of that year, An Act Authorizing A Credit Union To Sell, Transfer And Assign Any And All Loans, Investments Or Other Assets. At that time and continuing today, Chapter 171 is viewed as a restrictive statute such that, generally, a credit union would have authority only to the extent it is expressly stated in that law.

In that light, section 21C clearly was inserted as an enabling statute. The specific question before us is whether clause (d) of that section which states "no loans, investments or other assets shall be sold, transferred or assigned to another credit union chartered in the commonwealth without the prior written approval of the Commissioner" should be deemed as also authorizing that other state-chartered credit union to purchase any loans, regardless of the type of loan being sold.

A separate provision, section 24 of Chapter 171, general contains the loan authority granted a credit union. That section establishes the various classes of loans authorized and sets out a credit union's ability to make, acquire or participate in any specific class of loan. Those classes, as set out in the seven subdivisions of that section, authorize from personal and real estate loans to mobile home and open end credit loans. Only in subdivision B, however, governing real estate loans and more specifically first and second mortgages and condominium loans, is there express authority for a credit union to acquire loans of that class. It is that construction of section 24 which raises questions as to the extent of the authority intended by the language added by section 21C.

The Division is reluctant to view the intent of the inclusion of clause (d) in section 21C for the sole purpose of regulating the sale and purchase between state-chartered credit unions of only one of seven classes of loans particularly when that one class had previously been unregulated.

The Division takes the broader view that consistent with the permission granted a credit union by section 21C to sell, transfer or assign any and all of its loans, investments or other assets, clause (d) authorizes a credit union, with prior written approval of this Office, to enter into any such transaction with another state-chartered credit union and in conjunction with that authority to sell, also authorizes, by implication, the purchase of loans by that other credit union irrespective of the lack of any express authority in the related subdivision of a separate statute, section 24. In brief, it is the opinion of this Division that section 21C is an enabling statute and, in this case, as the later enactment it overrides any gap which results when clause (d) is considered with a related but previously existing section applicable to loans.

The opinion stated above applies to all acquisitions of loans by purchase between state-chartered credit unions. Accordingly, the sale of first and second mortgages and condominium loans from one state-chartered credit union to another must meet the requirements of section 21C. However, participation loans, as such transactions are governed in subdivision B of section 24 by paragraph 6 of subsection (a) for first mortgage loans and by paragraph 13 of subsection (b) for condominium loans, are not subject to section 21C.

Moreover, a credit union seeking the prior written approval of the Commissioner for a sale, transfer or assignment to another state-chartered credit union should inform this Office that the general provisions of section 21C have been met as well as the applicability, if any, of clauses (b) or (c) of that section.

COMMONWEALTH OF MASSACHUSETTS

DIVISION OF BANKS

ADMINISTRATIVE BULLETIN

Ref. No. 86-1

Issued: March 15, 1986

Mortgagees

G.L. c. 167E, § 2(B)(10)

G.L. c. 183, § 60

Opinion Relative To
Administrative Bulletin 13-2C (Revised)
Entitled "Memorandum On Adjustable Rate
Mortgage Loans" Reissued March 15, 1986,
Effective April 7, 1986

The Division of Banks' guidelines on adjustable rate mortgage loans (ARM guidelines), found in Administrative Bulletin 13-2C, generated several inquiries. The March 15, 1986, revisions to the ARM guidelines answered most of the questions received by the Division. The remaining questions concern interpretive issues on specific guideline provisions. These issues include introductory discounts, private mortgage insurance, cost disclosures, and loan premiums.

Questions have been raised about what initial rate setting prohibitions and procedures are intended by the guidelines. Section (1.01) of the guidelines indicates that it is not the intent of the guidelines to pre-determine any particular time that the interest rate is set. Section (1.05) of the guidelines specifically permits the setting of an initial interest rate below the fully-indexed rate. Section (5.01) does not require the rate to be set at application, but requires that if set later, then the method by which the rate will be established and the time it will be established must be set at the time of application. Appendix A of the guidelines is included as a sample of the mortgage product description sheet required in Section (6.04). It demonstrates how this sheet could be modified for an institution that sets their rates at some time after application. The guidelines are less specific with regard to the lender's ability to set rates based on market conditions, rather than on a formula using a fixed discount. The guidelines intend only to prohibit price setting in a way and at a time that is arbitrary. Arbitrariness includes the setting of the interest rate in a way and/or at a time not disclosed to the borrower at application.

If a rate is committed at application for a length of time known to the borrower, it is not material how the lender arrives at that initial rate. In the case of rates committed subsequent to application or in the case of establishing a rate replacement procedure for borrowers who fail to close their loan before their rate commitment expires, it is material that borrowers be informed at application exactly when and how the initial rate will be established.

This method should be based on information readily available to the general public and/or on information provided to the borrower at the time of application. The rate may, if desired, be based on the then-current market rate being committed for new applications. If a lender offers several interest rate setting options, the choice must be the borrower's.

Private mortgage insurance is not a separate loan product under the ARM guidelines because it is not a variable under Section (5.01). See Sections (1.00)-(3.00) for examples. Additionally, such mortgage insurance is required by statute for certain mortgage loans. The variability in costs for mortgage insurance makes uniform or precise price quotations difficult; however, the cost of any required private mortgage insurance should be disclosed. An estimated price range for the cost of mortgage insurance may be shown on the mortgage product description sheet.

Advice on the proper way to prepare a mortgage product description sheet when a lender is offering various rate-lock options at application has also been sought. Specifically, questions have been asked about whether product and rate information must be contained on one sheet. The guidelines specifically allow for modifications of the suggested format. Lenders are encouraged to experiment with various ways of disclosing product and price information to find a format that best suits their offerings and the consumer's need for complete and accurate information.

The final issue raised is whether the ARM guidelines preclude a lender from imposing a one-time, introductory "premium rate". This rate would be greater than the interest rate determined under Section (1.01) of the guidelines (the sum of the index plus the margin). No such charge is either intended or authorized by the guidelines. The margin is the only means for a lender to adjust the initial loan rate. All margins are subject to Section (1.03).

Administrative Bulletin 13-2C, as reissued, is effective April 7, 1986.

COMMONWEALTH OF MASSACHUSETTS

DIVISION OF BANKS

ADMINISTRATIVE BULLETIN

Ref. No. 87-1

Issued: March 15, 1986

All State-Chartered Banks
and Credit Unions
G.L. c. 167E, § 2(B)(10)

Opinion Relative To
Administrative Bulletin 13-2C (Revised)
Entitled Memorandum On Adjustable Rate Mortgage Loans
Reissued March 15, 1986

The Division of Banks is in receipt of a request seeking authorization to offer an adjustable rate mortgage loan product which contains a new loan design component. Due to the nature of the request, the Division's response is being directed to the industry.

This proposed product has been reviewed under G.L. c. 167E, § 2(B)(10) and the Commissioner of Banks' Memorandum on Adjustable Rate Mortgage Loans (ARM Guidelines) found in Administrative Bulletin Reference No. 13-2C (Revised) reissued on March 15, 1986. The ARM Guidelines apply to adjustable rate mortgage loans made or acquired by state-chartered financial institutions for the purpose of financing or refinancing the purchase of certain owner-occupied dwellings.

The proposed new adjustable rate mortgage loan design component is a hybrid. It combines the features of a fixed rate mortgage loan with those of an adjustable rate mortgage loan.

The loan product is a 30 year loan having an initial period of seven years with a fixed rate of interest set in relation to market rates. Thereafter, the rate would be adjusted at three-year intervals based upon an identifiable regional or national index plus a margin which is specified in the mortgage note. All other aspects and features of the proposed adjustable rate mortgage loan would conform to existing ARM Guideline requirements.

The Division has examined whether the proposed loan design component conflicts with any ARM Guideline provision and whether it would benefit consumers. The only potential conflict is presented by Section 3.02 of the ARM Guidelines. This section states that adjustment intervals "... should be of equal length" The proposal initially appears to contravene this provision. Section 3.02, however, is not phrased in mandatory terms. Consequently, it is the Division's position that Section 3.02 does not prohibit an initial adjustment period that is greater or less than successive interest rate adjustment intervals.

Allowance of the cited loan design component would permit the development of a new adjustable rate mortgage loan product. This loan product offers potential benefits to the consumer. It would give the consumer a previously unavailable intermediate choice in mortgage loan products. Such a program may appeal to a number of people, including first-time homebuyers, who are seeking the advantages of a fixed rate mortgage but who do not qualify under secondary mortgage market standards for long-term fixed rate mortgage loans.

Other considerations also weigh in favor of the proposal. The ARM Guidelines are not intended to restrict the development of new adjustable rate mortgage loan products or design components. Moreover, a similar loan product is already being offered to consumers by national banks under guidelines of the Comptroller of the Currency.

Therefore, the Division of Banks hereby authorizes state-chartered financial institutions to offer adjustable rate mortgage loan products containing a combined fixed and adjustable rate loan design component. This loan design component may have a market-driven, fixed rate initial adjustment interval that is longer than subsequent adjustment intervals. The interest rate for subsequent adjustment intervals shall be set equal to the preselected index and margin contained within the mortgage note in accordance with Section 3.00 and other applicable sections of the ARM Guidelines.

COMMONWEALTH OF MASSACHUSETTS

DIVISION OF BANKS

ADMINISTRATIVE BULLETIN

Ref. No. 90-1

Issued: March 21, 1990

Mortgagees

G.L. c. 167E, § 2

subsection B, paragraph 10

G.L. c. 183, § 60

Opinion Relative To
Certain New Balloon Payment
And Adjustable Rate Mortgage Products

The Division of Banks has received several inquiries with respect to new loan programs recently established by the Federal National Mortgage Association ("Fannie Mae"). The loan products consist of a seven-year balloon mortgage with an additional refinancing option and a mortgage program with a one-time rate adjustment at the end of seven years. Monthly payments for both products are based on a thirty-year amortization schedule with the initial seven years being at a fixed interest rate. The practical differences in the two products occur at the end of the seven-year period. The inquiries focus on whether these specific loan products would trigger provisions of the Massachusetts General Laws or an administrative bulletin of the Division of Banks.

The seven-year balloon mortgage with a conditional refinancing option consists of an initial seven-year period with a fixed rate of interest. The refinancing option allows borrowers to refinance the seven-year balloon at maturity into a twenty-three year fixed-rate mortgage if certain conditions set out in the Fannie Mae documents are met by the borrower. If these conditions are not met, the loan is due and payable upon maturity. The balloon payment feature of this loan product must be reviewed in light of Massachusetts G.L. c. 183, § 60 which requires that certain balloon payment notes include provisions "for automatic renewal or extension of the note at the option of the mortgagor."

The requirements of said § 60, however, are conjunctive, requiring that "... installment payments of principal or interest or both that will not amortize the outstanding principal amount in full by the maturity of such note and the term of the mortgage securing the note is for a period not less than the original or anticipated amortization period ...". In reviewing the Fannie Mae seven-year balloon program and documentation, it does not appear, however, to fall under the constraints of the statute since the term of the note and the mortgage securing the note are written for the same period - seven years.

The other program consists of a thirty-year adjustable rate loan with the only interest rate adjustment occurring at the end of the seventh year. The new rate is fixed for the remainder of the term of the loan. The initial interest rate of this product is described by Fannie Mae as being below the market interest rate for its standard fixed-rate mortgage product. This two-step program, so-called, although not a balloon payment mortgage, is an adjustable rate mortgage product and, therefore, a state-chartered bank or credit union would have the authority to write such loan under Massachusetts G.L. c. 167E, § 2, subsection B, paragraph 10, provided that it is written in compliance with the provisions of the Division's Administrative Bulletin 13-2C (Revised 1988).

Based upon a review of these loan products and applicable statutory provisions, it is the position of the Division that the seven-year balloon product as described herein and any other balloon mortgage product whereby the mortgage instrument is written for the term of the note, would not fall under the provision of Massachusetts G.L. c. 183, § 60. Additionally, the two-step program, so-called, and any similar program with a single adjustment over the life of the loan may be made by a state-chartered bank or credit union provided that it is written in compliance with the provisions of Administrative Bulletin 13-2C (Revised 1988).

